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IN THE
United States Court of Appeals
DISTRICT OF COLUMBIA

No. 9741.

THE EAST OHIO GAS COMPANY, *Petitioner*,
STATE OF OHIO,
THE PUBLIC UTILITIES COMMISSION OF OHIO,
Intervening Petitioners,

v.

FEDERAL POWER COMMISSION, *Respondent*.

Petition for Review of Order of the Federal Power Commission.

JOINT APPENDIX.

A Petition for Review of Order of the Federal Power Commission.

To The Honorable The Judges of the United States Court of Appeals for the District of Columbia:

Petitioner, The East Ohio Gas Company (hereinafter sometimes called "East Ohio"), being aggrieved by an order of respondent, the Federal Power Commission (hereinafter sometimes called the "Commission"), made in pro-

ceedings under the Natural Gas Act to which petitioner was a party, hereby files in this Court its written petition to review and set aside said order pursuant to Section 19(b) of said Act.

Petitioner is an Ohio corporation engaged in the local distribution of natural gas solely within Ohio. Respondent is a commission created and established by act of Congress (41 Stat. at L. 1063 (1920) as amended, 16 U. S. C. Sec. 792). By the Natural Gas Act (52 Stat. at L. 821 (1938), 15 U. S. C. Sec. 717) the Commission is vested with certain authorities over persons engaged in the interstate transportation or interstate sale of natural gas.

B. East Ohio was respondent and defendant in certain proceedings before the Commission commenced in 1939 and bearing its Docket Nos. G-115, G-399, G-400 and G-401. The order of the Commission herein sought to be reviewed and set aside was issued in such proceedings November 7, 1947 as a part of the Commission's Opinion No. 158 and it incorporated and made effective on that date an order previously issued by the Commission in such proceedings dated June 25, 1946.

Said Commission order of June 25, 1946, so made effective by the order of November 7, 1947, among other things, found East Ohio to be a "natural-gas company" within the meaning of the Natural Gas Act and hence subject to the Commission's jurisdiction and (1) ordered East Ohio to comply with all previous accounting orders (Nos. 69, 69-A and 73) made by the Commission and applicable to "natural-gas companies" subject to its jurisdiction, including those relating to the determinations of original cost of property, (2) ordered East Ohio to comply with all previous orders (Nos. 63, 80, 86, 100 and 113) of the Commission requiring such "natural-gas companies" to file annual reports on forms prescribed by the Commission, and (3) ordered East Ohio within 90 days to file with the Commission the data, statements and reports required by said orders in so far as East Ohio could reasonably supply the

same within that period and to inform the Commission in writing as to when the remainder of the required data, statements and reports would be filed.

On July 22, 1946 East Ohio filed an application for a rehearing and for a stay of said order of June 25, 1946, both of which were granted on August 23, 1946, the rehearing being limited to oral argument. After the rehearing the Commission issued its said order of November 7, 1947, which dissolved the stay; changed the effective date of the order of June 25, 1946 to November 7, 1947 and otherwise reaffirmed said order.

C On December 3, 1947 East Ohio applied to the Commission pursuant to Section 19(a) of the Natural Gas Act for a rehearing and a stay of said order of November 7, 1947. The application for rehearing set forth specifically the grounds upon which East Ohio claims that the order of the Commission and the opinions and findings upon which it was based are unlawful and prejudicial to East Ohio.

On December 30, 1947, after modifying said previous orders in respects not now material, the Commission denied said application for a rehearing and stay filed December 3, 1947.

East Ohio avers that said order of November 7, 1947, as modified by the order of December 30, 1947, but including the parts of said order of June 25, 1946 incorporated and made effective thereby as above set forth, exceeds the jurisdiction of the Commission and is unlawful for each of the following reasons upon which East Ohio relies:

I.

A. The Commission erred in failing to make and give effect to the following findings of fact requested by East Ohio and shown by undisputed evidence in the record to wit:

1. East Ohio is an Ohio corporation, organized in 1910 as a merger of several other Ohio companies. Its business from the beginning and now is the direct local distribution

of natural gas to 550,000 consumers in 69 Ohio municipalities with an estimated population of more than 2,000,000, of which the principal are Cleveland, Akron, Canton, Massillon and Youngstown.

2. The total sales of East Ohio in 1945 were as follows:

	In M.c.f.
Sold to domestic consumers	46,674,457
Sold to industrial consumers	30,126,754
Field sales	627,196
 Total sales	 77,428,407

D All sales to domestic and industrial consumers were made through East Ohio's local distribution systems in the 69 communities served. No sales to industrial or other consumers from pipe lines outside of those communities were made. No sales of any kind of out-of-state gas or a mixture of out-of-state and Ohio gas were made to any other company for resale. Field sales in their entirety are of gas both produced and consumed in Ohio.

3. All of East Ohio's rates and all of its public utility obligations are regulated in Ohio. This local regulation of rates consists of municipal ordinances accepted by East Ohio and constituting contracts under Ohio General Code Sections 3982 and 3983 or orders of The Public Utilities Commission of Ohio made on proceedings initiated by East Ohio or on appeal from a municipal ordinance fixing an unacceptable rate (Ohio General Code Sections 614-20 *et seq.* and Sections 614-44 *et seq.*). All gas sales made by East Ohio are at rates fixed in accordance with Ohio statutes.

4. East Ohio never has and does not now transport natural gas in interstate commerce or otherwise for any other person, nor has it ever held itself out as willing to do so. No gas is moved from East Ohio's lines to points outside the state.

5. For 35 years East Ohio has been and is now completely subject to The Public Utilities Commission of Ohio in respect of all rates not agreed upon with municipalities and

in respect of all other public utility service obligations. The Public Utilities Commission of Ohio has exercised its regulatory power over rates and other East Ohio matters in no less than 258 separate proceedings during its existence. That Commission has repeatedly placed a valuation upon, and examined and determined the operating expenses of, the pipe lines running from the Ohio River to Cleveland city gate and elsewhere.

E 6. East Ohio's gas supply comes from (1) Ohio producing fields, (2) gas delivered at the Ohio-West Virginia line by the Hope Natural Gas Company, and (3) gas delivered by the Panhandle Eastern Pipe Line Company at Maumee, Ohio. Through these lines East Ohio receives gas produced in West Virginia, Louisiana, Texas, Kansas and other southwestern fields. During recent years from 70% to 85% of East Ohio's supply is out-of-state gas and the remainder is Ohio gas. All out-of-state gas delivered to East Ohio is at prices that have been fixed by regulatory orders of the respondent.

7. The total number of miles of pipe line owned and operated by East Ohio as of December 31, 1945 was as follows, using the accounting classification required by The Public Utilities Commission of Ohio:

	Miles
Distribution lines	5,490
Storage lines	672
Field lines	1,011
Transmission lines	903

Of the lines classified in the accounts as transmission lines approximately 650 miles serve the purpose of bringing out-of-state gas from points of delivery at or near the state boundary line to East Ohio's local distribution systems and for the most part without further compression. These lines serve no other purpose. If East Ohio's distribution business were terminated it would have no use whatever for these lines or any of its property. East Ohio's purchases and sales, receipts and deliveries are all in Ohio.

8. East Ohio for many years has been keeping its books of account in accordance with the Uniform System of Accounts prescribed or permitted by The Public Utilities Commission of Ohio and has filed annually reports, depreciation rates and similar accounting and other data with

F the Ohio Commission. The cost to East Ohio of attempting to comply with respondent's Orders Nos. 69, 69-A and 73, requiring reclassification and a statement of original cost of all of East Ohio's properties—general, distribution, transmission and production—would now be between \$1,500,000 and \$2,000,000.

B. The Commission erred in failing to correct its Finding (15) in said order of June 25, 1946 that East Ohio's transmission lines Nos. 1, 2, 3, 4, 5 and 6 and its Youngstown branch lines "are not, and at all times mentioned herein, were not facilities used for the * * * local distribution of natural gas," and further erred in its findings in said Opinion No. 158 "that East Ohio's 650 miles of transmission pipe lines, described herein, are not 'facilities used for' local distribution, * * *."

C. The Commission erred in not finding and holding that the transmission lines referred to in paragraph B above in their entirety are facilities used by and useful to East Ohio solely for the local distribution of natural gas in Ohio within the meaning of Section 1 (b) of the Natural Gas Act; that East Ohio is not a "natural-gas company" as defined in the Natural Gas Act; and that the Commission is without jurisdiction over East Ohio.

D. The Commission erred in not finding and holding that the transportation by East Ohio of its own gas through the transmission lines referred to in paragraph B above, solely for the purpose of meeting its only public utility obligation, namely, local distribution in Ohio, is "other transportation" within the meaning of Section 1 (b) of the Natural Gas Act; that East Ohio is not a "natural-gas company" as defined in the Natural Gas Act; and that the

Commission is without jurisdiction over East Ohio. It further erred in its findings in said Opinion No. 158 "that East Ohio's transportation of out-of-state natural gas in such lines is neither 'other transportation' nor 'local distribution' within the meaning of said Section 1(b)."

G

II.

The Commission erred in requiring East Ohio to comply with the Commission's accounting requirements as set forth in its orders Nos. 69, 69-A and 73 for the reason that said accounting requirements apply equally to all classes of property owned by a "natural-gas company" while the jurisdiction and authority of the Commission by the provisions of Section 1 (b) of the Natural Gas Act do not extend to the local distribution of natural gas, or to the facilities used for such distribution, or to the production and gathering of natural gas, or to the facilities used for such production or gathering. To the extent that said former orders of the Commission, with which East Ohio is directed to comply as a result of the Commission's order of November 7, 1947, require East Ohio to conform to the accounting requirements of the Commission in respect of any facilities or business, other than those relating to the transportation of natural gas in interstate commerce, each of said orders is beyond the power of the Commission and invalid. Each of said orders should be modified so as to apply only to such transportation property and operations.

III.

A. The information required by the Commission orders with which East Ohio is directed to comply are solely for the purpose of compiling information having no possible relevancy to any governmental object except the regulation of East Ohio's rates for the local distribution of gas in Ohio. The orders and any provisions of the Natural Gas Act construed to authorize their issuance therefore constitute an invasion of the powers reserved to the State of Ohio

under the Tenth Amendment to the Constitution of the United States and an invalid extension of the powers delegated to the federal government by Article I, Section VIII thereof and are unconstitutional and void.

H. B. To comply with the Commission's said orders, including those relating to original cost, would impose upon East Ohio an expense between \$1,500,000 and \$2,000,000. East Ohio's testimony as to this expense was in no way challenged before the Commission and its statement in Opinion No. 158 that East Ohio's estimate is "unsupported" and "not convincing" is arbitrary. Compliance with said orders by East Ohio at this very large expense, even if it were held that East Ohio was technically subject to the jurisdiction of the Commission, will serve no useful regulatory purpose of the Commission since East Ohio has neither rates nor service subject to regulation by the Commission and will serve no useful purpose in the regulation in the State of Ohio of East Ohio's rates for local distribution since original cost is not a factor in such regulation. Said orders of the Commission constitute an abuse of its statutory powers and are arbitrary and invalid as an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States and as a deprivation of East Ohio's property without due process of law and a taking of its property for public use without just compensation in violation of the Fifth Amendment thereto.

IV.

When the Commission made its original order dated February 14, 1939 in Docket No. G-115, which was supplemented by its order dated April 14, 1939, East Ohio filed its applications for rehearing and after denials thereof promptly filed a petition to review such orders in the Circuit Court of Appeals for the Sixth Circuit. By such appeal East Ohio sought to have it judicially determined whether or not it was a "natural-gas company" within the

meaning of the Natural Gas Act and whether the Commission had jurisdiction over it. It was at that time prevented from having this question determined by a motion of the Commission to dismiss the appeal on the ground that the orders involving this question were not reviewable. The Circuit Court of Appeals so held in East Ohio Gas Co. v. Federal Power Commission, 115 F. (2d) 285 (1940).

The ground upon which the Commission's motion to dismiss was made and sustained was that East Ohio could set up its defense that it was not subject to the jurisdiction of the Commission if and when an action was brought by the Commission in the United States District Court pursuant to Section 20 of the Natural Gas Act to enforce its orders. To this date the Commission has made no effort to enforce its said orders of 1939 or any subsequent orders by proceeding under Section 20.

Promptly following the making of said order of June 25, 1946 by the Commission East Ohio filed its application for a rehearing and a stay thereof and both were granted on August 23, 1946 by the Commission, the rehearing being limited to a reargument. The reargument was held before the full Commission on March 19, 1947 but the Commission did not dispose of the matter until November 7, 1947.

Thus from 1939 to 1947, a period of 8 years, no serious attempt has been made by the Commission to enforce the orders of 1939 or any later orders. During all of that period the Commission could at any time have proceeded in the District Court in accordance with Section 20 of the Natural Gas Act.

Said delay in the enforcement of said orders has not interfered with the Commission's performance of its duties and no injury appears of record or otherwise to the Commission on account of this delay. Nor could any such prejudice result, for the plain fact is that East Ohio's only rates subject to regulation by any one are local distribution

rates in Ohio and East Ohio's only public service obligations are local distribution obligations.

J No harm and no prejudice of any kind will result to any one from a stay of the Commission's order of November 7, 1947 until East Ohio's status under the Natural Gas Act is finally decided by the courts.

WHEREFORE petitioner, East Ohio, respectfully prays the Court that pending its disposition of this petition for review it forthwith stay the respondent Commission's order of November 7, 1947 and as a part thereof its order of June 25, 1946 in said proceedings in said Docket Nos. G-115, G-399, G-400 and G-401 (as modified by the order of December 30, 1947); that a copy of this petition be served upon a member of the Commission as prescribed by law and that the Commission be required to certify and file in this Court a transcript of the record in said proceedings; that the Commission's said orders in said proceedings be reviewed and set aside; and that petitioner be given such other and further relief as may be just and equitable.

Respectfully submitted,

THE EAST OHIO GAS COMPANY,

By WILLIAM B. COCKLEY and
WALTER J. MILDE,

1759 Union Commerce Bldg.,
Cleveland 14, Ohio.

Wm. A. DOUGHERTY and
C. W. COOPER,

30 Rockefeller Plaza,
New York 20, New York,
Its Attorneys.

K STATE OF OHIO,
CUYAHOGA COUNTY, ss.

W. G. ROGERS, being first duly sworn, says that he is Vice President of The East Ohio Gas Company, an Ohio corporation, petitioner herein, that he has read the foregoing petition for review, and that the statements therein set forth are true as he verily believes.

W. G. ROGERS.

SWORN To before me and subscribed in my presence this January . . . , 1948:

Wm. R. PRINGLE,
Notary Public.

**Excerpts from Testimony and Proceedings of Hearing
on Docket No. G-115 et al. Held March 19-20, 1946.**

68 Mr. Purdue: If the Examiner please, I propose a stipulation as follows:

* * * * *

71 Mr. Purdue: With respect to Order Number 63, East Ohio has not filed with the Commission annual report FPL Form Number 133 for 1939.

Mr. Cockley: Agreed.

Mr. Purdue: With respect to Order Number 69, and Order Number 69-A, East Ohio has not, as of January 1, 1940, and thereafter, kept its books of accounts in accordance with the uniform system of accounts prescribed for natural gas companies subject to the provisions of the Natural Gas Act, but has kept them in accordance with the uniform system of accounts prescribed by the Public Utilities Commission of Ohio, or permitted by the Public Utilities Commission of Ohio to be used.

Since January 1, 1942 the Public Utilities Commission of Ohio has permitted the use of a uniform system of accounts the same in language as that of the Federal Power

Commission, and since that time East Ohio has been using such permitted system of accounts.

Mr. Cockley: Agreed.

Mr. Purdue: East Ohio did not comply by January 1, 1942 and has not complied to date with gas plant accounts instruction 2-D of the uniform system of accounts prescribed for natural gas companies subject to the jurisdiction of the Commission and Order Number 73.

Mr. Cockley: Agreed.

Mr. Purdue: With respect to Order Number 80, East Ohio did not file annual report FPC Form Number 133 for the year 1940.

Mr. Cockley: Agreed.

Mr. Purdue: With respect to Order Number 86, East Ohio has not filed annual report FPC Form Number 133 for the year 1941.

Mr. Cockley: Agreed.

Mr. Purdue: East Ohio has not filed annual report FPC Form Number 133 for the year 1942.

Mr. Cockley: Agreed.

Mr. Purdue: East Ohio has not filed annual report FPC Form Number 2 for the year 1943 or annual report FPC Form Number 2 for the year 1944.

Mr. Cockley: Agreed.

* * * * *

85 **J. French Robinson** called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cockley:

Q. Will you state your name, residence and business? A. J. French Robinson, Cleveland, Ohio. President of the East Ohio Gas Company.

Q. How long have you been president of the East Ohio Gas Company? A. Since November of 1940.

Q. And prior to that what was your business? A. President of the Peoples Natural Gas Company.

Q. What is the Peoples Natural Gas Company? A. Peoples Natural Gas Company is a company owned by Consolidated Natural Gas Company, who also owns East Ohio Gas Company.

Q. And also owns the Hope Natural Gas Company, and one or two other companies. Is that right? A. That is correct.

Q. At the time one of the former applications was heard
the evidence was that the stock of the East Ohio Gas
86 Company and of the Hope Company and some other
companies was all owned by Standard Oil Company
of New Jersey. What is the fact to date? A. None of that
stock is owned by the Standard Oil Company of New Jersey.

Q. And is owned by whom? A. Is owned by the Consolidated Natural Gas Company.

Q. When did that change occur, approximately? A. December, 1943.

Q. Counsel would like to have you name the other companies owned by Consolidated besides Hope, Peoples and East Ohio? A. The River Gas Company and the New York State Natural Gas Company.

87 By Mr. Cockley:

Q. Mr. Robinson, I show you the paper marked Exhibit 3 for identification, and ask you if that is prepared from the books and records of the East Ohio Gas Company under your direction and supervision? A. Yes.

Q. Directing your attention to page 1 of that exhibit, I will ask you where the property shown on that page is located—all of it? A. All of the property shown on that page is located within the State of Ohio.

Q. Has the company any property, any additional property of any kind, located outside of the State of Ohio? A. None whatever, sir.

Q. Directing your attention to the field lines and
 88 storage lines, in general what does that item represent? A. Field lines are lines used in our production system for gathering the gas from the wells and starting it on its way to local distribution.

Storage lines are those lines used in and about our two storage areas—in one case for the injection of gas into the storage area and in the other case withdrawing the gas from the storage area to use in local distribution.

Q. And the storage areas are all in Ohio? A. Storage areas are all in Ohio.

• • • • • • • •

Q. The next item is miles of transmission line. It shows 903 miles. Is that figure merely the number of running measurement of those lines? A. Yes, sir. 903 miles represents the total length of the transmission lines so
 89 classified on our books, which is used for the movement of gas from the state line and from our production and the Maumee Line into our local distribution markets.

Q. That is, if I may so state it, moves both out of State gas and purely Ohio gas. A. That is correct.

Q. To your local distribution centers. A. Yes, sir.

Q. Is that right? A. Yes.

(Question and answer read).

By Mr. Cockley:

Q. Without taking up each of these items is it true of your compression stations, and of your gas wells shown here, your storage wells, and all of them, that all of them are in the State of Ohio? A. That is correct, sir.

Mr. Cockley: I call the Examiner's attention, merely by way of understanding the extent of this operation, to the fact that the total number of consumers here are 550,000 attached to the East Ohio system, and the total population served is some 2,000,000.

Trial Examiner: The exact figures are shown here on page 1 of your Exhibit 3?

Mr. Cockley: I just wanted to direct your attention to them.

Trial Examiner: Yes.

It shows the number as of December 31, 1945, and estimated population is 2,015,000.

Mr. Cockley: Yes.

Trial Examiner: Before you depart from your description of the physical property would you be so kind as to have the witness explain to me the item of 1,011 miles of field lines?

Mr. Cockley: Yes.

By Mr. Cockley:

Q. Will you do that, Mr. Robinson? A. Yes, sir. The 1,011 miles of field lines are those lines in varying sizes from 2-inch up to 8 or 10-inch that are used to connect the producing wells of the East Ohio Gas Company, and the wells under gas purchase contracts of the East Ohio Gas Company into its general distribution system.

Q. From the Ohio fields? A. All located in the State of Ohio.

Trial Examiner: Those are separate and apart from what you hear designate as transmission lines?

The Witness: Yes, sir.

Trial Examiner: These transmission lines, these 903 miles, perform what specific function?

The Witness: The 903 miles of transportation line as classified perform the function of moving gas in one case from the Ohio River northward, and in the other case from Maumee eastward of out-of-state gas as well as of gas produced and purchased in the State of Ohio through these lines to our local distribution areas.

Trial Examiner: So that as I understand it, the 903 miles carry the interstate gas, which you say at some point is intermingled with your home production, or Ohio production. Is that correct?

The Witness: I stated that the lines moved the gas in a northerly direction from the Ohio River, where it is received in the East Ohio system, and moves it eastwardly from Maumee and along the movement of such gas it is commingled with Ohio produced and purchased gas to our common market.

92 Q. Where would those domestic consumers be located—in the 69 communities? A. Yes, sir.

Q. All of them? **A.** All of them located in the State of Ohio, principally in Cleveland, Akron, Canton, Youngstown, Massillon.

Q. Then you set forth the thirty million—odd Mcf of sold to industrial consumers. Where do those sales take place? A. The industrial sales take place in our distribution systems in these various towns and cities located in the State of Ohio.

Q. Do you have any direct sales of any kind from what you classify as your transmission system to industrial consumers? **A.** None whatever, sir.

Q. Do you have any direct sales from the transmission system or any other sales from the transmission system to other gas companies for resale? **A.** None whatever, sir.

Q. Either of gas received from out-of state or from
93 Ohio gas? A. None whatever, sir.

Q. All right.

Now, will you explain what the item of "Field sales" is given there, 627 thousand—odd MCF? A. Those are sales that are made in the field from the producing wells, or from wells under purchase by the East Ohio Gas Company to drilling contractors, to land owners who have a free gas right under their lease for a certain amount of gas, and the excess is sold to them for their own use, and other incidental sales made in the field in the State of Ohio.

Q. Those sales are made from the producing fields in Ohio, are they, all of Ohio gas? A. Yes, sir.

Q. Is the gas that goes from that consumed entirely in Ohio? A. It is, sir.

95 Mr. Cockley: I offer in evidence exhibit for identification No. 3.

Trial Examiner: Exhibit marked No. 3, for identification, is admitted in evidence.

(Exhibit marked No. 3, for Identification, was received in Evidence).

Mr. Cockley: May I have this marked Exhibit 4 for Identification?

It is a paper entitled, "System Map of the East Ohio Gas Company, March 1, 1946."

Trial Examiner: The document just referred to and designated as System Map of the East Ohio Gas Company, March 1, 1946, will be marked Exhibit No. 4 for identification.

(The Document Referred to Was Marked Exhibit No. 4, for Identification.)

By Mr. Cockley:

Q. Directing your attention to Exhibit No. 4, will you state whether that was prepared under your direction
96 from the records of the East Ohio Gas Company?

A. It was, sir.

Q. Does it correctly set forth the information shown by those records, and also shown on the map? A. Yes, sir.

Q. Now, Mr. Robinson, will you with the map explain how you have indicated the markets for your gas and the local distribution system of your gas? A. The area outlined in yellow, or the solid area in yellow, represents the distribution areas of the East Ohio Gas Company located in the State of Ohio.

97 Q. Will you tell us where you received out-of-state gas into this system? A. Out-of-state gas is re-

ceived at the West Virginia-Ohio State line at a point near Clarington Station.

Q. That is at the lower right hand corner of the map, isn't it? A. That is correct, at a point on the State line in Monroe County, and at Pipe Creek Station, in Belmont County, Ohio, and a point on the eastern portion of the map near Petersburg in Mahoning County.

Q. Below Youngstown, isn't it? A. South of Youngstown; yes, sir. At these points gas is purchased from the Hope Natural Gas Company.

Q. While we are on it tell us what that Petersburg delivery is used for? A. The Petersburg delivery is used on extreme peak days to help augment the East Ohio Gas Company supply of gas, which due to lack of transportation facilities, sufficient amounts of gas cannot be produced in Ohio and purchased in Ohio and moved northward through the pipeline system of Ohio to supply our local distribution demands.

Q. Around Youngstown? A. Youngstown, Niles and so forth.

Q. Then your main deliveries are those two, down at Pipe Creek and Clarington Station, are they not? A. 98 That is correct.

Q. Tell us where the East Ohio line begins, where its transmission lines connect with the Hope lines at that point? A. The East Ohio lines begin at the West Virginia-Ohio state line in all three cases.

Q. That is the low-water mark on the Ohio side, north shore of the Ohio River? A. West shore of the Ohio River, or north shore, as it may be.

* * * * *

Q. Now, up to that point, the gas is carried in Hope pipelines which connect with yours, by river crossing. Is that correct? A. Yes.

Q. And it is metered on the Hope side of the River and delivered to you into your transmission line on the west side of the river? A. Yes, sir; that is correct.

Q. Will you tell us, then, from there on in general what is the movement of that gas? A. The general movement of the gas, after taking it into the East Ohio Station at Clarington Station and Pipe Creek Station, is a northerly direction. Sometimes it is regulated or the pressure is cut back at Price Farm, marked on the map, Price Farm, when too much gas gets into the system.

Q. Do you mean by that that is your first regulation point? A. Yes, sir.

Q. For Hope gas? A. Yes.

Q. At Price Farm? A. Yes, sir. The general regulation point of the entire East Ohio Gas Company's distribution system is at Gross Farm, which is about midway between Price Farm and the City of Cleveland.

Q. And that, I note from the map, is also right in the heart of your storage area and right in the heart of your producing area. A. That is correct, sir.

Q. Tell us where Ohio Gas is first introduced into those lines. A. Ohio gas is first introduced to those lines at a point in Franklin Township, Harrison County, just north of the point marked on the map "Smith Farm".

Q. From then on north Ohio gas comes in at various points. Is that right? A. That is correct, all along 100 the lines clear into the City of Cleveland.

Q. Does gas ever flow from the East Ohio pipe lines, any of these that you have mentioned, back to the Hope Company? A. It does not, sir. The movement is always northward.

Q. And always has been? A. Yes, sir.

101 Q. Will you explain in general to the Examiner and for the record how this system of yours operates, at what point the flow of gas is generally controlled in order to take care of the local distribution in this area that is north of Gross Farm Station, north and east of Gross Farm Station. A. Gas is regulated at Gross Farm so that certain quantities of gas move northward into Akron and the Cleveland area, as well as on peak days southwestward through a line extending down towards Knox County.

The flow in that line is sometimes northward and sometimes southward.

Going east from Gross Farm, the gas is controlled so that certain amount of the gas passes through a 14-inch and a 16-inch line going eastward to Austintown Junction, where, again, the gas is controlled so that a certain amount goes to Warren, Niles, Youngstown, Middletown, Petersburg, and East Palestine. Some gas is brought into the system through East Ohio Gas Company's pipeline number 6, which extends from Maumee, Ohio eastward to Valley City Station, and on eastward to where it connects with our main trunk pipelines.

The gas entering our system in this line moves in an easterly direction to Valley City, thence, northward into the Western part of the City of Cleveland. After some gas has

been received at the Junction of the main lines at 102 Bresh Farm, the movement at some times is northward into Cleveland and other times, particularly in the summertime, southward and put into our storage areas, which are shown in and around the Gross Farm, outlined in blue.

Q. You referred to gas coming into the line from Maumee, did you not? A. Yes.

Q. From whom is that gas purchased? A. Panhandle Eastern Pipeline Company.

Q. And they deliver to you where? A. At a station just south of Maumee, known as our Maumee Station.

Al Examiner: Where is that on the map?

The Witness: In the extreme northwestern portion of the map.

Mr. Cockley: Lucas County?

The Witness: Yes, on the west bank, or a little west of the west bank of the Maumee River.

By Mr. Cockley:

Q. All the gas you get from Panhandle comes at that delivery point. Is that correct? A. That is correct.

Q. Does gas ever move from your system into the Panhandle System at that point? A. It does not.
 103 Q. Or any other? A. It does not.
 Q. And that gas comes to you at what pressure?
 A. About 320 pounds at Maumee. Our contract provides up to 350 pounds.

Q. Where do you regulate that pressure? A. First regulation is at Valley City.

Q. Shown on the map south of Cleveland? A. South of Cleveland, yes.

Q. From that point I think you have already said you could put it into Cleveland or you can send it on down to Akron or put it into storage. A. That is correct.

Q. In any direction you may demand or require? A. That is right.

Q. And that gas likewise is all sold through your local distribution plants? A. It is.

Trial Examiner: What is the distance from Maumee point where Panhandle delivers the gas to Valley City Station?

The Witness: 98 miles, sir.

Trial Examiner: How far is Valley Station from Cleveland City Gate?

The Witness: About 12 to 15 miles.

Mr. Gorman: Pipeline miles or as the crow flies?
 104 The Witness: Pipeline miles.

Trial Examiner: From Maumee to Valley City Station it moves under the original pressure of Panhandle. Is that correct?

The Witness: It moves under its original pressure, yes. That is correct.

By Mr. Cockley:

Q. The gas you purchase from Panhandle is all subject—
 you purchase under Schedule 61 of the Federal Power Commission, do you not? A. Yes.

Q. And there since has been a recent order of the Federal Power Commission regulating Panhandle rates. Is that so? A. Yes.

Q. And schedules filed pursuant to that order? A. Yes.

Q. How has the price at which you purchase Hope gas been fixed? A. The Federal Power Commission has set a price, and same is so listed in the schedule setting forth that price at which East Ohio pays Hope for the gas it receives.

Q. So the price of all of this out-of-state gas you purchase has been regulated and set by the Federal Power Commission. Is that correct? A. That is correct.

106 Trial Examiner: What is the distance from Pipe Creek Station to Cleveland?

The Witness: From Pipe Creek Station to Cleveland?

Trial Examiner: What is the transmission pipeline mileage there.

The Witness: 118½ miles.

Trial Examiner: What size pipe is that?

107 The Witness: 18 and 20 inch mostly.

Mr. Gorman: What do you mean by mostly?

The Witness: Some gas moves through a 12-inch line. The majority of the pipeline is either 18-inch or 20-inch, with the exception of a little bit of T. P. L. Number 1 which is 10-inch.

Mr. Gorman: Where is that section of 10-inch?

The Witness: Section of 10-inch goes from Gross Farm northward.

Trial Examiner: Is that gas transported through that line at the same pressure at which it was received at Pipe Creek Station from Hope Natural Gas Company?

The Witness: The gas moves northward through these transmission lines losing pressure as it moves northward, necessary for the friction loss, and for the most part, enters local distribution at its own pressure. However, in some cases it is necessary to repump the gas at Robinson

Station at the Gross Farm for distribution to the Youngstown-Warren-Niles area.

It is also necessary to repump this gas when it goes into our storage areas.

• • • • • • • • •

108 By Mr. Cockley:

Q. At Gross Farm, Mr. Robinson, state the fact as to whether or not you can control the direction of the flow from all of these present lines from the Ohio River north to connect with Hope lines? A. Yes, that flow can be diverted in many directions in and around Gross Farm.

108-A Q. And is in accordance with the demands of the various parts of your system? A. That is correct.

Q. If you have a nerve center to your whole distribution picture here, where is it? A. Gross Farm is the center of all of our local distribution operations.

Q. Do you ever in these pipelines transport gas for other persons? A. No, sir, we have not done that.

Q. Or held yourself out as being willing to transport gas for other persons? A. No, sir, we have not.

Q. Have you ever carried anything in this transmission system here except gas owned by the East Ohio Gas Company by purchase from Hope or other persons? A. No, we have not.

Mr. Cockley: I offer in evidence Exhibit Number 4 for identification.

Trial Examiner: The document marked Exhibit 4 for identification, and designated as system map of the East Ohio Gas Company, March 1, 1946, is admitted in evidence.

(Exhibit Number 4 for Identification Was Then Admitted in Evidence.)

Mr. Cockley: I ask to have marked as Exhibit 5
109 for identification a paper entitled "The East Ohio Gas Company, names of sellers of gas purchased by

the company and the points of delivery of such gas, February, 1946."

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131 Q. Have you any public utilities service of any kind—does East Ohio Gas Company render any public utilities service of any kind, that has not been regulated by the Public Utilities Commission of Ohio? A. We have not, sir.

Q. In rate proceedings in Ohio, Mr. Robinson, I will ask you to look at that Exhibit No. 4, which is the map of East Ohio system, in the rate proceedings involving the City of Cleveland, for instance, will you indicate on that map what of your properties the Public Utilities Commission of Ohio inventoried, examined for depreciation, and included in a rate base in determining the rates for Cleveland? A. They included a complete study of all the property shown on this map in determining the rate for the City of Cleveland except the distribution property colored yellow elsewhere on the map than Cleveland.

Q. How about the Maumee line? A. Yes, sir; that was included.

Q. In the last case. A. In the last case.

Q. But not in the 1937 case. A. That is right.

132 Q. It was not constructed? Is that right? A. That is right. It was included in the last Cleveland case.

Q. Did they examine and value all these transmission lines from the Ohio River through Gross Farms North? A. Yes.

Q. And all the other transmission lines you have in your system? A. Yes.

Q. And your complete production system property? A. Yes.

Q. And your general property? A. Yes, sir.

Q. All of it? A. All of it; yes.

Q. And then allocated part of it? A. Yes.

Q. And the storage property? A. Yes, sir.

Q. And all the local distribution property in Cleveland area? A. That is right.

Q. Does East Ohio Gas Company own any lines that cross state boundaries? A. They do not.

133 Q. If your local distribution business as you have described it were terminated, what use would you have for any of the properties shown on that map? A. None whatever, sir. All of our business is local distribution.

Q. And your purchases and sales and receipts and deliveries are all in Ohio? A. Yes, sir.

* * * * *

137 Q. Order No. 69 and Order 69-A, and Order 73, of the Federal Power Commission in general direct natural gas companies to reclassify and state the cost, original cost of all their properties. You are familiar with that? A. That is correct; that is my understanding.

Q. Did you make any estimate, general estimate, of the cost of attempting to comply with that order of the
138 Commission? A. Yes, sir.

Q. What is that answer, please? A. At the present time, with the increased cost of labor, it is our best estimate that the reclassification will cost between three-quarters of a million and a million dollars, and that the original cost will cost a like amount.

Q. So far as statement of original cost is concerned—withdraw that.

You are including in that estimate, I take it, your distribution property and your general property and your production property as well as your transmission property. Is that correct? A. That is correct.

Q. The order makes no distinction between those, does it? A. None whatever.

Q. Will you tell us what part of your property is used for purposes of local distribution? A. All of our property is used for local distribution.

Q. About how much of it is for distribution?

139 Mr. Gorman: May I have the previous question
and answer read back, please?

Mr. Gorman: I think that statement stands by itself.

Trial Examiner: I would like to ask this witness a clarifying question there.

Mr. Witness, when you use the term "All of the property", do you mean the transmission line, production, as all part of your distribution line?

The Witness: What I intend to convey is that our sole purpose in business is to distribute gas. Therefore, any part of our system is used for that purpose.

Trial Examiner: That is the purpose of every line that engages in that line of business, to distribute gas. That is why it is taken out of the ground. That is what you are alluding to, to distribute gas as your ultimate objective.

The Witness: That is all of the business East Ohio Gas Company has, sir.

Trial Examiner: I will sustain the objection to that.

Mr. Gorman: There was originally a motion to strike, if the Examiner please.

143 Trial Examiner: Yes. Are you testifying here as an expert for the purpose of designating what the system is, or are you just detailing what your conception is of operations of any gas?

The Witness: I think I am testifying from a lifetime experience in the gas business as to the function of the various phases and steps of the gas business.

Trial Examiner: What do you consider that part of the system that transmits the gas to the distribution lines or distribution system?

The Witness: As classified on the books of the company we have classifications of distribution; we have classification of production; we have classification of transmission, and storage.

Trial Examiner: And storage?

The Witness: And each of those classifications, the function of them in the East Ohio Gas Company, is to distribute gas locally. I have no idea as to what the scientific determination may be. That is the practical operating standpoint of the company.

Trial Examiner: I see. In other words, the system consists of transmission system, production system, storage system, and a distribution system.

The Witness: The purpose of which is all to market gas; yes, sir.

Trial Examiner: To market gas.

144 The Witness: Yes, sir.

Trial Examiner: That is our understanding. I do not see there is any serious difference of opinion.

I think the question as asked, with that explanation of the witness as to what he meant, cannot mislead anybody. I would sustain the objection, and have sustained the objection, to the answer as then standing. But in view of the witness' explanation as to what he meant by it I think there cannot be any misunderstanding as to what he meant.

I do not think he is attempting to pass any legal opinion as to what all of that constitutes. What he says is true as

to the ultimate use of gas, no matter how far it is transmitted or carried intrastate—it is all intended for the purpose of consumption by means of distribution.

Mr. Gorman: We will agree with that.

Trial Examiner: Yes. I think that is what his testimony purports to be.

The Witness: That is correct, sir.

Trial Examiner: That is what you mean.

The Witness: That is right.

Trial Examiner: I will just reverse that ruling and admit the evidence. Let the answer stand to which the objection has been made.

You may proceed, gentlemen.

By Mr. Cockley:

Q. How much of your property do you classify as
145 a matter of accounting, percentagewise as distribution property? A. 52.7 per cent.

Q. And production and storage? A. ~~16.3~~ per cent.

Q. Transmission? A. 27.7 per cent.

Mr. Gorman: May I inquire at this point whether these percentages are based upon book valuation, or how are they computed?

The Witness: Taken directly from the books of the company.

Mr. Gorman: In other words, book value percentage.

The Witness: Yes, sir.

By Mr. Cockley:

Q. Do you have addition to that some general property?
A. Yes, sir; 3.3 per cent.

153 Q. Now it also has been shown and referred to here that the company did not seek a review of the Commission's order in Docket G-266, and in Docket G-458.

Did you seek and obtain advice of counsel in those cases as to whether or not the order there made was re-

154 viewable? A. We did, and were informed they were not reviewable.

Q. Was any petition for rehearing filed in behalf of the East Ohio Gas Company in Docket No. G-266 or Docket G-458? A. No.

Q. Was any appeal ever taken from the final order in either of those Docket numbers to any Circuit Court of Appeals in the United States? A. No, sir.

Q. And that failure to take any action on your part was after seeking and obtaining advice of counsel that the orders were not appealable. Is that correct? A. Yes.

157 Q. Mr. Robinson, I am calling your attention to pages 98 and 99 of the record to the question, "Will you tell us, then, from there on in general what is the movement of that gas?" Read your answer and see if there is anything you want to add to it to clarify it. A. The sentence beginning "Sometimes it is at Price Farm", and so forth, should read, "Sometimes it is regulated or cut back, or the pressure is cut back at Price Farm".

158 Cross Examination

By Mr. Purdue:

Q. Mr. Robinson, as I understand your testimony, your company has, does it not, an 18-inch pipe line extending from the Pipe Creek Station on the Ohio River to Cleveland? A. That is correct.

Q. Is that pipe line designated by your company, T. P. L. No. 2? A. It is.

Q. What does T. P. L. stand for, Mr. Robinson? A. Designation we have at Trunk pipe line systems.

Q. I see. In other words, T. P. L. stands for trunk pipeline, does it? A. Yes, sir.

159 Q. Does your company have another line designated as T. P. L. No. 3, extending from Clarington Station at the Ohio River to Philadelphia—to Cleveland?

A. Yes, sir; it has.

Q. When was T. P. L. No. 2 constructed? A. 1903.

Q. When was T. P. L. No. 3 constructed? A. 1907.

Trial Examiner: Referring to what Exhibit, now, Mr. Purdue?

Mr. Purdue: If the Examiner please, I was not referring to any exhibit in particular. However, the numbers that the witness has just testified to appear upon the system map, Exhibit No. 4.

Trial Examiner: All right. Thank you.

By Mr. Purdue:

Q. Mr. Robinson, is it true that prior to 1909, the East Ohio Gas Company and its predecessor of the same name did not purchase or distribute Ohio gas? A. I am not sure. I think that is correct, although I am not positive.

Q. Now, Mr. Robinson, to refresh your recollection I hand you the application of respondent, that is the East Ohio Gas Company, for a rehearing—

Mr. Cockley: We will admit that. You do not need to waste time on it. We did not distribute Ohio gas until it was discovered at about the date you mentioned, or subsequent to it.

By Mr. Purdue:

Q. Then it is true that prior to 1909, the entire supply of East Ohio Gas Company was procured at the Ohio River from the Hope Natural Gas Company of West Virginia. Is that right? A. Yes, sir.

Q. So, then, T. P. L. No. 2, and T. P. L. No. 3 were constructed, were they not, for the sole purpose of carrying out of State gas? A. No, that is not so.

Q. What other gas were they constructed for the purpose of carrying? A. There was certainly in the minds of the

officers at that time that gas would be developed along the lines and it would be so put in.

Q. Well, now, why was it then that it was not until the year 1909 that you began to purchase or distribute Ohio gas? A. I am sure I could not tell you, sir. I was not there. I have seen more records that would explain it in the files of the company.

Q. Mr. Robinson, so far as you know, the sole purpose of T. P. L. No. 2 and T. P. L. No. 3 was to carry 161 out of State gas, was it not?

Mr. Cockley: I object to it. He already has answered the question.

Mr. Purdue: He has not answered it, Mr. Examiner.

Mr. Cockley: He said that was not the sole purpose of it. You are trying to put those words in his mouth.

Mr. Purdue: I object to this interruption, if the Examiner please. I think this is a proper question.

Trial Examiner: All right. He may answer the question.

The Witness: I stated before that certainly the officers of the company had in mind developing gas along these lines and would use it for that purpose.

By Mr. Purdue:

Q. Mr. Robinson, how did you know that when you say you were not there? A. I don't know it. I say, I assumed that. Being an operator that certainly would be my intention now and is my intention of laying T. P. L. No. 7. I expect to develop some gas along it and expect to put it into that line.

Trial Examiner: As I gather from your testimony, it is that that is what you would have done had you constructed the line.

The Witness: That is correct, sir.

Trial Examiner: But what it was constructed for 162 you do not know.

The Witness: No, sir; I do not.

Trial Examiner: I see.

By Mr. Purdue:

Q. Mr. Robinson, does your company have a line designated T. P. L. No. 4, which extends from Clarington Station to Gross Farm, and which from Clarington to Price Farm is 20 inches in diameter, and from there on to Gross Farm 18 inches? A. That is correct.

Q. Does your company have still another line extending from Clarington Station to Cleveland, called T. P. L. No. 5, and which has a diameter of 20 inches? A. That is correct.

Q. Mr. Robinson, I hand you the application in Docket No. G-695, and direct your attention to Exhibit "C" thereto. I will ask you what the black dot surrounded by a circle in Wetzel county represents? A. Hastings compressing station, Wetzel county, West Virginia, the location there.

Q. Is that a compressor station of the Hope Company? A. It is.

Q. Mr. Robinson, do you note that Exhibit "C" shows an 18-inch line and two 20-inch lines extending from Hastings Station to the Ohio River in the vicinity of 163 Clarington? A. Yes, sir.

Q. Are those figures correct so far as you know? A. So far as I know, yes, sir.

Q. Is it also true that exhibit "C" shows another line 18 inches in diameter extending from Hastings Station to the Ohio River in the vicinity of Round Bottom? A. Yes, sir; that is correct.

Q. All right. So that the fact is, is it not, Mr. Robinson, that we have one 18-inch line and two 20-inch lines approaching the Ohio River in West Virginia, and one 18-inch line and two 20-inch lines of the East Ohio Company extending away from the River in Ohio? A. That is correct.

Q. Now, also, there is an 18-inch line of the Hope Company which approaches the river in the vicinity of Round Bottom and an 18-inch line of the East Ohio Company extending away from the river in the State of Ohio? A. That is correct.

Q. What difference, if any, is there Mr. Robinson, between the lines of the Hope Company in West Virginia that approach the river and the lines of your company in Ohio that extend away from the river? A. Will you read that for me.

(Question read).

164 The Witness: From the Hope lines in West Virginia there are headers constructed, and from these headers smaller lines are run across the river, and on the west bank of the river, again, a header is constructed. These headers then are connected to the lines of the East Ohio Gas Company.

I am not sure that is what you mean, but those are the facts of the matter.

By Mr. Purdue:

Q. The headers and the small lines in the river, to which you have testified, are an ordinary river crossing, are they not, Mr. Robinson, ordinary submerged river crossing? A. There are various kinds. Some use multiple lines, various sizes from eight to twelve inches, or whatever it may be. This is a particular method the Hope Natural Gas Company used in getting the gas to the East Ohio system.

165 Well, it is an ordinary kind of river crossing, isn't it? A. I just said, management has different ideas. On my last Maumee Line I used an entirely different method. Theirs is as good as mine, no doubt.

Q. The headers and the small lines are a river crossing, at any rate, is that right? A. Yes. They constitute a river crossing. Headers are not.

Q. Constitute a river crossing? A. Yes.

Q. Going back to my question, my question was not about the facilities in the river but about the lines approaching the river and receding from the river. I will repeat the question. What difference, if any, is there, Mr. Robinson, in the lines of the Hope Company approaching the Ohio River in the vicinity of Clarington and Round Bottom and

the lines of your company leaving the river at those points? A. I know of no difference in the texture of the pipe that is in the lines at all. I assume it is all the same pipe.

Q. Do you know of any difference in any other respect? A. No, they are all pipelines.

Q. The gas flows as freely in the lines of the Hope Company as it does in the lines of your company, does it not?

A. Probably a little more so, because it has lost a
166 little pressure as it progresses.

Q. Is the pressure the same on the two sides of the river? A. No.

Q. How much difference is there? A. Very small.

Q. Is it substantially the same? A. Yes, I would say substantially the same.

Q. Is the movement of gas stopped at the Ohio River? A. It is not.

Trial Examiner: Mr. Purdue, pardon me, please . . . Go ahead.

By Mr. Purdue:

Q. The gas that moves in the lines of the Hope Company which you have testified to is destined for markets in Ohio, is it not? A. Yes, sir, in the particular lines we just mentioned.

Q. Yes. And is the gas that moves in the lines of your company to which you have testified going away from the river destined for markets in Ohio? A. Yes, sir.

Q. Does the gas flow from the Hope lines into your lines 24 hours a day? A. Hope delivers us gas 24 hours a day.

Q. Day in and day out? A. Yes, sir.

167 Q. Mr. Robinson, I hand you the instrument which has been incorporated by reference in this proceeding and which is designated "Hope Natural Gas Company Rate Schedule, FPC No. 1." I call your attention to the following language in paragraph 5 of that agreement:

"The Hope Company undertakes and agrees, subject to the provisions of Paragraph 7 hereof, that at all times dur-

ing the continuance of this contract it will maintain in good order and condition all its compressing stations, pipelines, connections, and other facilities in the State of West Virginia in order to enable it to carry out its obligations under this contract and to deliver gas hereunder in such volumes as to maintain pressure equivalent to 225 pounds at the junction point of its lines with the lines of the Ohio Company as at present constructed and operated at the Ohio River."

I will ask you if the purpose of that provision was not to obligate the Hope Company to deliver gas to your company at such pressures as would enable the gas to be carried to points of distribution on your system? A. At that time I think that is correct, the time of that contract. But the markets have so developed that that would be an impossibility at the present time.

Mr. Cockley: What was the date of that contract, Mr. Purdue?

Mr. Purdue: The date of that original contract was March 1, 1940.

168 By Mr. Purdue:

Q. Mr. Robinson, that contract continued in effect between your company and Hope until what date? A. I'll have to get it. I can't remember those. I will have to look it up.

Mr. Cockley: It is all in that rate schedule which you have before you.

By Mr. Purdue:

Q. The contract to which I have referred—did it continue in effect until it was superseded by the contract between your company and Hope dated April 27, 1944, and which is on file with the Commission as Hope Rate Schedule FPC No. 8? A. Yes, sir, that is correct.

Mr. Cockley: There were other—

The Witness: There also has been a supplement now to FPC No. 8.

Mr. Cockley: And there were modifications of that contract from time to time. There are main contracts, but there were modifications and rate modifications.

By Mr. Purdue:

Q. The provision I just read you continued in effect until April of 1944, did it not, Mr. Robinson?

Mr. Cockley: Does not the file you have show the fact about it?

Mr. Purdue: It does.

169 The Witness: From my data here it would appear that that clause would be effective up until April 22, 1944.

By Mr. Purdue:

Q. I now hand you Hope Natural Gas Company Rate Schedule FPC No. 8 and call your attention to Article 6 thereof at page 6, which reads as follows:

"Pressure: Gas delivered hereunder at the points of delivery shall be delivered by Hope at such pressures as East Ohio may from time to time reasonably request, but Hope shall not be required to deliver at pressures in excess of 300 pounds per square inch gauge."

I will ask you if the purpose of that provision was not to assure the delivery of gas to points of distribution on your system? A. The purpose of that pressure is primarily to get volume of gas through our system, and—

Q. To points—

Mr. Cockley: Let him finish, please.

The Witness: —volumes in our system to our distribution areas. The pressure and volume, for the most part, does go to our market without additional compression. Some of the gas that is delivered from the lines which receive the pressure at 300 pounds is compressed by the East Ohio Gas Company and transported to our Youngstown-Warren-Niles area.

By Mr. Purdue:

170 Q. I hand you Panhandle Eastern Pipeline Company, FPC No. 61, being the contract between the Panhandle Company and yours, dated February 4, 1943, and call your attention to the language of Article 12 thereof as follows:

"Pressure: Eastern agrees to use due care and diligence to furnish gas hereunder at such uniform pressure as East Ohio may require up to, but not exceeding, 350 pounds to the square inch gauge pressure at the point of delivery. In the event Eastern is unable to maintain such uniform pressure so that East Ohio is not able to take substantially uniform hourly deliveries throughout a day, East Ohio, in such event, shall not be obligated under Article 2, Paragraph 4-(a) above, to purchase and receive from Eastern gas at a higher hourly rate from 7 p. m. to 7 a. m. than the average hourly rate of delivery during the preceding 7 a. m. to 7 p. m."

What was the purpose of the provision which I have just read to you respecting pressures? A. The purpose of the provision was in order to secure a volume of gas from Panhandle as specified in the contract; namely, 50 million cubic feet per day.

Q. And for the further purpose, was it not, of the gas being delivered through your system to distribution points and storage? A. Naturally. We do not pump any of the gas on the Panhandle line except that part that goes to Gross Farm, and then it is pumped Eastward to Youngstown, or Niles, as I previously stated, or into storage.

Q. There is a detail in connection with your testimony in Docket No. G-458 given by you on April 21, 1943, that I would like to clear up. I have reference to your testimony at page 112 as follows:

"Question. Is there any interruption of the movement of the gas from the time that it is pumped at the Hastings Sta-

tion in West Virginia until it reaches the city gates in Ohio?

"Answer. Yes, I would say that there is some slowing down of the movement from the very beginning when it leaves Hastings, due to the friction in the pipelines. That is, the gas which moves from the Ohio River northward is sometimes cut back at our Gross Farm station and is regulated again at our distribution centers, and finally reduced down to a 4- or 6-ounce basis before it goes to the consumer."

Now, I will ask you when you say the gas is sometimes cut back at your Gross Farm Station, you meant, did you not, that the movement northward of a portion of the gas is sometimes stopped and not that the movement of all the gas is stopped? Is that right? A. Either way you want it. All the gas can't be stopped. Some of it goes through. What part of it is stopped I have no idea. We just cut down volume by that method.

Q. As a matter of fact, in the situation to which
172 you testified, at Gross Farm all of the gas is not stopped, is it? A. No, sir. I don't think I testified that it was.

Q. I don't think you did, either, Mr. Robinson. A. I understood you wanted it cleared up.

Q. I don't think you testified that way, but I wanted it cleared up. The language was not quite clear to me.

Mr. Robinson, I hand you Exhibit No. 4 and call your attention to the shaded area on the right-hand side of the map, a square including Youngstown and the vicinity thereof. I believe you testified that was a distribution area. A. Yes, we distribute the gas in the Youngstown area.

Q. Do you have pipelines in the area shaded in yellow to which you have testified? A. Naturally.

Q. Are those pipelines included within the 5,430 miles of distribution line shown on page 1 of your Exhibit No. 3?

(Question read.)

The Witness: They are.

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counts the same in language as that of the Federal Power Commission, and since that time, East Ohio has been using such permitted system of accounts."

Now, do you agree with that stipulation, Mr. Robinson?

A. No doubt it is correct, yes.

175 Q. Gas plant accounts instruction 16, transmission and distribution plant of that system of accounts which appears at page 51 of item 6 of Exhibit No. 1, provides as follows, does it not: "For the purpose of this system of accounts "A" Transmission system means the land, structures, mains, valves, meters, boosters, regulators, tanks, compressors, and their driving units and appurtenances and other equipment used primarily for transmitting gas to a particular municipality or distribution system. The transmission system begins at the outlet side of the valve at the connection between the gathering lines or other source of supply and inlet to the transmission compressor station or other gathering terminals, and includes the equipment at such connection that is used to bring the gas to transmission pressure and ends at the inlet side of the equipment which meters or regulates the supply of gas into the distribution system. It does not include storage land or structures.

"B. Distribution system means the mains which are provided primarily for distributing gas within a distribution area or for connecting two or more districts within a distribution area, together with land, structures other than storage land and structures, valves, regulators, services, and measuring devices. The distribution system begins at

the inlet side of the equipment which meters or regulates

176 the entry of gas into the distribution system, and ends with, and includes, property on the customer's premises."

Now, that is a correct statement of those instructions, is it not, Mr. Robinson? A. Yes, sir.

Q. In the light of those instructions I will again ask you why you classified the Youngstown lines as distribution

lines and not as transmission lines? A. For the same reason I gave before.

Trial Examiner: May I ask a question here?

Mr. Cockley: It seems to me the confusion arises from the start when he said "Do you have pipe lines in the city of Youngstown?"

Of course we have pipe lines. We have pipe lines in distribution plant, pipe line in transmission plant and pipe lines in gathering plant. They are all pipe lines, unless he is using "Pipe lines" in some technical sense.

From that original confusing term he then proceeds to ask about these figures here. I don't see what we are getting at.

Trial Examiner: I was going to inquire of Commission counsel to please illustrate what pipe lines he was referring to. You mentioned Youngstown pipe line. In the City of Youngstown?

177 Mr. Purdue: Yes, Mr. Examiner. Pipe lines in the yellow-shaded area.

Trial Examiner: Just what is that yellow-shaded area? In that yellow-shaded area I have noticed what appears to me to be a small dot and with the name "Youngstown" over it.

Mr. Purdue: I am referring to the square, Mr. Examiner.

Trial Examiner: How large is that square? What does it embrace? Is that a township? Is that a County? What area does it cover, or is that simply the City of Youngstown alone, although Youngstown seems to be shown by a small circle.

By Mr. Purdue:

Q. Mr. Robinson, what area is embraced within the yellow square to which I referred? A. That is Youngstown proper and the colored area covers the township. That also covers surrounding territory.

Q. To what use are your lines put? A. It moves the gas into the homes of the individual customers within the area

and moves it about the city. Some of it goes south to other areas. Some goes north into Gerard.

Q. Was the fact that it does move the gas to the consumers' premises, and the other particulars to which you have testified, the reason you classified the lines as
178 distribution lines? A. No, I think not.

Q. What was the basis of your classification of those lines? A. Those lines were classified way back many years ago under the basis of the Ohio Public Commission code, I imagine, because they have been carried that way on the books for a long time. The original basis was prescribed by the Ohio Commission, or it might even have been before the Ohio Public Utilities Commission. I don't know. I will have to look it up.

Trial Examiner: You don't know?

The Witness: No.

By Mr. Purdue:

Q. Do they comply with the present uniform system of accounts? A. Yes, as far as I know.

Mr. Cockley: You mean the Ohio system.

Trial Examiner: Was that a question you were asking this witness, Mr. Cockley?

Mr. Cockley: I wanted to clarify this. He said, "Comply with the present uniform classifications". You mean the FPC classification?

Mr. Purdue: The classification I just read the witness.

Trial Examiner: Are you referring to the Ohio
179 Public Service Commission's classification or the Federal Power Commission's classification?

Mr. Purdue: I am referring to the Federal Power Commission's classification. As the evidence shows it was adopted by the Ohio Commission and made effective as to this company.

Trial Examiner: Then it includes both Federal Power and Ohio. Is that it?

Mr. Purdue: Yes, Mr. Examiner.

Trial Examiner: All right.

Mr. Cockley: I think maybe I can clarify this thing so the record will not get confused, and save time.

The company is in the process of making a re-classification. That has not progressed very far. These statistics, being annual statistics—

Mr. Purdue: If your Honor please, I object to the testimony on the part of counsel.

Mr. Cockley: I thought we had explained all this to you yesterday when we made this stipulation, explaining that that code of the Ohio Commission—the Ohio Commission gave us permission to use the Federal Power Commission code of accounts and we proceeded to do it.

Trial Examiner: When was that permission granted, sir?

Mr. Cockley: April 15, 1942.

Trial Examiner: It has taken this length of time, 180 over four years, to reclassify them?

Mr. Cockley: Mr. Examiner, during the war period labor to do this was just not obtainable at any price. It is a job that will require scores of accountants in order to do it. It means the expenditure of probably \$750,000 to complete it. It will take in normal times, when you can get all the help you need, two or three years to do it.

This Commission recognized that when they put it into effect by authorizing the companies two years time to do it. I don't believe any large company was able to get their reclassification in within two years.

Trial Examiner: I think inquiry was directed to the purpose of getting that information.

Mr. Cockley: What is that?

Trial Examiner: My inquiry was directed to you for the purpose of getting that information.

By Mr. Purdue:

Q. Exhibit No. 3 shows, does it not, 903 miles of transmission lines? A. Yes, sir; it does.

Q. Is T. P. L. No. 2 included within that classification of transmission lines? A. Yes, sir.

Q. What was the basis of that classification? A. The same basis as I gave before. It was following the 181 Ohio Public Utilities Commission prescribed method of accounting.

Q. Can you produce the definition of the Ohio Public Commission to which you referred which was in effect prior to the Federal Power Commission system? A. Yes. I don't have a copy of the code with me but I will get one.

Q. Will you do so, please?

Mr. Cockley: I will hand him a copy of the code.

The Witness: I have had handed me a copy of uniform classification of accounts of natural gas utilities, Public Utilities Commission of Ohio, effective January 1, 1921. I note reference to transmission measuring station equipment under 225, on page 53, transmission line equipment under 226, of page 53, and another transmission equipment on page 227.

Mr. Cockley: Item 227.

The Witness: Yes. Shall I read that?

Item 225, page 53, is as follows:

"Charge to this account the cost of equipment owned by the utility and used by it in measuring natural gas before it is transmitted to the distribution system. In the charges to this account include the cost of meters, gauges, and other equipment used in the transmission system measuring station."

Heading 226, "Transmission Line Equipment: "Charge to this account the cost of pipe line equipment owned 182 by the utility and used by it in transmitting natural gas from the compressing or boosting stations, or other points where the transmission system begins."

"In the charges to this account include the cost of transmission line pipe, collars, couplings, other fittings, gates, valves, and other equipment accessory to the transmission

pipe lines, the cost of hauling, ditching, constructing supports, conduits, and so forth, laying pipe, refilling, repaving, damage to crops, fences, and so forth; also the cost of tools consumed, other supplies used, and expenses incurred in the construction of transmission lines."

"The records supporting the entries to this account shall be so kept that the utility can furnish information as to the diameter, length, weight, material, price, and date of installation of each transmission line; also the cost and date of installation of collars, couplings, and other fittings."

Account No. 227. "Other transmission system equipment. Charge to this account the cost of equipment not provided for elsewhere, owned by the utility, and used by it exclusively in the transmission system."

Trial Examiner: Are those provisions of the Public Utilities Commission of Ohio accounts which correspond in their numbers to the numbering of the Federal Power Commission's uniform system of accounts?

183 The Witness: No, sir; they do not.

Trial Examiner: But the language is the same?

The Witness: No.

Mr. Purdue: No, your Honor. It is not the same.

Trial Examiner: All right.

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By Mr. Purdue:

Q. Do you have transmission line equipment in the Youngstown area colored in yellow, which you have testified to? A. No, sir.

Q. Is your Maumee to Brush Farm line designated by you as TPL No. 6 in your Exhibit No. 4, included by you within the 903 miles of transmission line? A. If is.

Q. On what basis did you classify that line? A. 184 Same as the other trunk pipe line.

Q. How many town border regulator stations do you have in the Cleveland area? A. Three major ones.

Q. Are they the Hummel Road, Willow Station, and Dunham station regulator stations? A. That is correct.

Q. Are they shown by the rectangle opposite the names "Hummel Road, Willow Station, and Dunham Station" on Exhibit "N" to your application in G-695? A. I don't happen to have one of those with me at the moment. Yes, that is diagrammatical representation of them.

Q. North of those stations do you have any transmission pipe lines? A. We have pipe lines that carry gas classified on our books as distribution lines.

Q. To what use are those lines put, Mr. Robinson? A. Movement of gas.

Q. To where? A. All over the city of Cleveland.

Q. To low pressure regulators? A. Yes, sir.

Q. Then to what use are the lines put beyond the low pressure regulators? A. Moving the gas from the low pressure regulator to the individual consumers.

Q. Willow station is located at the terminus of TPL No. 1, TPL No. 2, and PL No. 3, according to this exhibit. Is that a correct representation? A. Yes, sir.

Q. Is the Dunham station located at the terminus of TPL No. 5, as indicated by Exhibit "N"? A. That is correct.

Q. I want to ask you a question of another nature relative to Exhibit "N".

I take it that the rectangle at the bottom of the page adjacent to which is the name Hastings, refers to the Hastings compressor station. A. That is correct.

Q. Do the figures in red which appear to be figures designating number of pounds as illustrated by the figure 330 at Hastings, indicate the normal and usual operating pressures of the Hope system at that point and of your system? A. It is somewhat of a normal in the winter time when the demand is heavy.

Q. You say "somewhat of a normal". You mean, generally speaking, it is normal winter time operating condition.

Is that right? A. No, I said—Yes, I will agree with that. It is just different wording.

Q. How many town border regulator stations do you have at Akron? I wouldn't know offhand.

187 Q. About how many? A. About two or three.

* * * * *

Q. Mr. Robinson, what is the function of the lines at Akron beyond the regulator stations, beyond the town border regulator stations? A. Which lines are we talking about? The one shown on the map?

Q. No, sir, the lines in the City beyond the town-border stations you have testified to. A. Their function is to move gas into the low pressure areas, low pressure system, and then distribute it to consumers.

188 Q. In other words, to low pressure regulators. A. Yes, sir.

Q. Are the operations similar to those described by you at Cleveland? A. Identical.

Q. Is the situation the same at Youngstown? A. The general situation is carried out throughout our entire system.

Q. Do you have town border regulator stations which move the gas to the low pressure lines? A. Regulators do not move gas anywhere.

Q. Do you have town border regulator stations at Youngstown? A. Yes, sir.

Q. Beyond that point where does the gas go? A. It is distributed in the general Youngstown area and the adjacent territory.

Q. Does it go to low pressure regulators? A. Yes, sir.

Q. The same operations as at Akron and Cleveland? A. Same general operations; yes, sir.

Q. Do you have town border regulator stations at the other communities which you serve? A. Yes, sir.

Q. All of them? A. As far as I know; yes, sir.

189 Q. Do you have town border meter stations at all these towns? A. Yes, sir.

Trial Examiner: Could you clarify this information for me, Mr. Robinson: Where does your transmission end, and

where does distribution begin? At your town border meter stations? Is that where your transmission ends and your distribution begins?

The Witness: That is where our classification of accounts divided the situation; yes, sir.

Trial Examiner: So that there would be transmission lines up to the point of metering at each city gate station. Is that correct? A. Yes.

By Mr. Purdue:

Q. What is the purpose of the town border meter stations? A. Measures gas.

Q. To measure the gas delivered from the transmission pipe lines to the various local distribution areas? A. Measure the gas that moves in that area; yes, sir.

Q. In other words, the bulk volumes of gas transmitted in the transmission lines. Is that right? A. I don't know what you mean by "bulk". All gas that passes that 190 station is metered at our metering station in each community.

Q. In other words, it meters all gas that is delivered to a particular community from the transmission pipe lines? A. That is correct.

Q. Mr. Robinson, you have testified that the gas which your company receives in its Maumee line is delivered by the Panhandle Company. Is that right? A. That is correct.

Q. Do the Panhandle facilities include a 22-inch line extending from the State of Indiana into the State of Ohio? A. It includes a large pipe line. I would not say right now whether ~~is~~ a 20 or 22-inch line.

Q. Do the Panhandle facilities also include a 16-inch Panhandle line extending from a point of connection with the larger Panhandle line to Maumee? A. It is either a 16 or 18. I don't recall which, sir.

Q. In your gas contract with the Panhandle Company dated February 4, 1943, which I believe is Panhandle FPC

No. 61 rate schedule, it is stated as follows at page 1, commencing in the middle of the third paragraph:

191 "Michigan Gas Transmission Corporation owns a 16-inch transmission line extending from a point on the main line near the Ohio-Michigan state line to a point near the city limits of Maumee, Ohio." A. That would satisfy me as to the size of the line.

Q. Do you happen to know this: Was the Michigan Gas Transmission Corporation an affiliate of the Panhandle Eastern Pipe Line Company, which was later absorbed by Panhandle? I believe that is the fact, but I am not sure. Do you know? A. That is my understanding; yes, sir.

Q. Continuing to read from the paragraph: "It,"—Michigan Gas Transmission Corporation,—"proposes to reinforce and increase the capacity of said transmission facilities, and that from and through such combined facilities, Eastern can assure delivery of natural gas to East Ohio at a point near Maumee, Ohio, in sufficient quantities to fulfill the requirements of this agreement."

Can you tell us in a brief way if the 16-inch line, if the capacity of the 16-inch line, was reinforced and increased at the place specified, and, if so, what was done? A. I don't think the 16-inch ever was increased or never was proposed to be increased. I think there have been some improvements, and looping has been done on their other system, on their 22 and 24-inch lines to make more gas available.

192 To my recollection I don't recall anything ever being done to the 16-inch line. However, it could be done without my knowledge.

Q. Would the effect of the main line looping be to permit increased deliveries at the Maumee connection? A. I don't know what we would have to do with it. We have a definite contract with Panhandle to furnish fifty million cubic feet per day.

Q. Well, I will read you the following language again, and I will ask you what was the purpose of the provision:

"That is,—Michigan Transmission Corporation,—proposes to reinforce and increase the capacity of said transmission facilities, and that from and through such combined facilities Eastern can assure delivery of natural gas to East Ohio at a point near Maumee, Ohio, in sufficient quantities to fulfill the requirements of this agreement." A. That was just an assurance that there would be sufficient gas there for our use.

Q. Particularly on peak days? A. No. We have never been able to get from Panhandle any additional gas on peak days more than the fifty million cubic feet.

Q. Well, the effect of the looping was to insure delivery of increased quantities on peak days, was it not? A. I think not, sir.

Q. Of the contract quantity? A. No; I don't think so.

193 Q. Mr. Robinson, is the main Panhandle line as to which you testified, being a 20 or 22 inch line—is there any difference between that line on the Indiana side of the state boundary and on the Ohio side of the state boundary? A. I did not see it constructed but I would think it would be identical.

Q. Does the gas flow along the main line at that point without interruption? A. As far as I know it does.

Q. Is there any interruption of the natural gas at Maumee where it is delivered to you by Panhandle? A. Yes, sir.

Q. What does that consist of? A. Regulation.

Q. What is the nature of the regulation. A. The gas we receive from Panhandle is so regulated that we get a constant volume of gas throughout the day. Therefore, as our demands build up on an hourly basis it automatically picks that up. In order to do that there must be pressure held back of the regulator where we get our gas.

Q. The gas which you receive from Panhandle moves without stopping, does it not, from the Panhandle facilities into your Maumee line? A. Well, there is some pres-

194 sure built back of the regulator. Something has to build up that pressure. Practically all of the gas moves continuously through there. There is a build-up of pressure in order to take care of the flow which has to hold some gas back.

Q. And does that gas move into your Maumee line continuously 24 hours a day, day in and day out? A. Yes, sir.

* * * * *

195 Q. Your company has no compressor station along the route of your Maumee line, does it? A. No, sir; it has not.

Q. Is any gas received into that line other than the gas which you get from Panhandle? A. I believe not, sir.

Q. On page 3 of your application in Docket No. G-458, paragraph "D", the following statement is made:

"As shown on Exhibit "C", said pipe line"—that is the Maumee line—"is to be used solely for the purpose of bringing in an additional supply of gas to applicant's Medina line extending to Cleveland and to applicant's Brush Farm station." Then it continues—Is the line as operated by you used solely for that purpose, namely the purpose of bringing in an additional supply of gas to your Medina line extending to Cleveland, and to your Brush Farm station? A. It does.

Q. It is? A. Is and does.

Q. What are the functions of the Valley City regulator station? A. The function of the Valley City regulator station is to control the flow of gas that goes north through our Medina line into the City of Cleveland.

196 Q. It does not regulate the gas flowing through to Brush Farms? A. Yes, sir; we pinch it back in order to force more through that line.

Q. Those are the only operations performed by that regulator station? A. Yes.

Q. You testified on direct examination, Mr. Robinson, to a number of respects in which your company is subject to

regulation by the Ohio Public Utilities Commission. Does the Ohio Public Utilities Commission require your company to file either a reclassification of accounts or original cost studies? A. At the present time we are working on the reclassification of accounts in accordance with permission from the Ohio Commission. They have not required the filing of original cost.

* * * * *

197 Q. Were you required to file an application for a certificate of public convenience and necessity for the Maumee line with the State Commission, either for that line or for the line for which you applied in G-695? A. No, sir. Before construction I went down and explained in detail to the Commission our plans and our schedule of construction.

Q. But you were not required to do that, were you, Mr. Robinson? A. No, sir, except I only thought it was good business to do it.

Trial Examiner: May I ask for an explanation of that statement?

The Witness: They are always anxious to know what we are doing, and in a great many cases we have conferred with them on our plans before they develop. On many of them we go to them to get definite approval, and some we do not. But we endeavor to keep closely in touch with them and advise them as to our major operations. They have always been very much appreciative of it.

198 Trial Examiner: In other words, they appreciate the voluntary information which you give them.

The Witness: Yes, sir.

Trial Examiner: You do not believe it is a matter of obligation on your part to do so.

Mr. Cockley: It is a matter of obligation on our part to furnish them any information they may request, Mr. Examiner, and they have quite wide authority under the statutes which I shall inquire about. And they do that frequently.

Trial Examiner: In any event, no formal application is necessary and you did not file any?

The Witness: That is correct, sir.

Trial Examiner: All right.

By Mr. Purdue:

Q. Mr. Robinson, you testified on direct examination that the gas at the Maumee connection with the Panhandle was received ordinarily at a certain pressure. What was that figure? A. Maximum pressure we have received gas at that connection is 320 pounds. Our contract obligation of Panhandle is to furnish it up to 350 pounds.

Q. At what pressure do you ordinarily receive it, approximately? A. It depends on the demands on our system at the other end. Because as we get a terrific pull in our line going from Brush Farm north, that pressure becomes somewhat lower. Consequently, Panhandle has to regulate their pressure in order to give us fifty million a day. So that is a variable throughout the day.

I would say the normal operating pressure would be in the neighborhood of 300 pounds.

Q. When the pressure at the East Ohio connection with Panhandle at Maumee is 300 pounds, what is the pressure in the Panhandle 22-inch line at the point of connection with the 16-inch line? A. I would not know, sir. It is somewhat in excess of 320 pounds.

Q. What is the pressure at the Valley City? A. That varies, of course, as the operations—the normal pressure at Valley City ranges between 175 and 200 pounds.

Q. Is that coming in to Valley City? A. That is right.

Q. Now, when pressure is 300 pounds at the Panhandle East Ohio connection, what is the pressure at the Brush Farm connection? A. That varies quite materially. The average would be around 160 to 185 pounds.

Q. In other words, there is very little regulation at Valley City of the gas going through to Brush Farm?

200 Mr. Cockley: I object to it. He stated exactly what is done at Valley City. There is no necessity for general comment about it.

Trial Examiner: I will overrule the objection.

The Witness: Just such regulation as is necessary to force through our Medina line the amount of gas that we desire to locate in the western part of Cleveland.

By Mr. Purdue:

Q. Mr. Robinson, do the figures on statement No. 7 of Exhibit I-2, to your application in G-458, as to the estimated pressures of the proposed pipe line from Maumee to Brush Farm—are those figures, generally speaking, the same as in the operation of the line after its installation? A. I have not looked at that report for a couple of years. I am sure I could not tell you without seeing what they are.

Q. Would you look at statement No. 7, and see if you can answer the question? A. I would say those are substantially a little lower than the actual operation. The present operations are the correct ones.

Q. At the time of filing of G-458, a statement was made in that application, or in one or more of the exhibits that there were some 773 miles, as I recall it, of transmission lines in the East Ohio system. As you testified
201 earlier today, there are at present 903 miles. Is the difference in figures occasioned by reason of the construction of the Maumee line? A. To the extent of 111.7 miles.

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208 By Mr. Purdue:

Q. I believe it appears somewhere in the record, Mr. Robinson, that a portion of the natural gas which the Hope Company delivers to your company is gas which is supplied to Hope by Tennessee Gas and Transmission Company. Can you tell me if the gas supplied by Tennessee Gas and Transmission Company is gas which originates in Texas? A. Yes, sir.

Q. That is true, is it? A. Yes, sir; near Corpus Christi.

Q. Yesterday you testified at the very bottom of page 144, and at the very top of 145;

209 "Question: How much of your property do you classify
as a matter of accounting percentagewise as distribution property, production and storage?" Then
the next question: "Transmission?" "Ans. 27.7 per
cent."

Is your property so classified in your plant account, that
is between production and storage and transmission and
distribution? A. Yes, sir; it is.

Q. Can you tell me in dollars as of the present time, or as
of some recent time, the total amount of your plant account?
A. Yes. As of December 31, 1945, the total amount was
\$85,066,881.01.

Q. What was the total amount in transmission plant? A.
Take that percentage of that and it will give it to you.

Q. I see. Now, does your company recognize the same
breakdown between transmission, production, and distribu-
tion in your operating expense accounts? A. To some ex-
tent wherever it is applicable, we have a pipe line super-
intendent who looks after the trunk pipe lines. We have
various managers and superintendents in our various
plants. A good deal of our work is done by one and by
another. What I mean by that is that if there is a big job
to be done in a hurry in our distribution end of it we use
any men available for it. If there is a big job to be done in
transmission we do the same.

210 Q. But you do have operating expense accounts for
transmission, for distribution, and for production?

A. Yes.

Q. At page 97 of your testimony on yesterday, commen-
cing with line 15, you testified as follows:

"Question: While we are on it, tell us what that Peter-
burg delivery is used for?"

"Answer: The Petersburg delivery is used on extreme peak days to help augment the East Ohio Gas Company's supply of gas; due to lack of transportation facilities sufficient amounts of gas cannot be produced in Ohio and purchased in Ohio and moved northward through the pipeline system of Ohio to supply our local distribution demands."

What transportation facilities did you have in mind, Mr. Robinson, as being inadequate? A. I wouldn't say inadequate. They are just not sufficient. In other words, we can only get a certain amount of gas through our transmission lines moving in a northerly direction from the Hope which would meet our market requirements.

Q. You had in mind, then TPL No. 2, No. 3, 5 and so forth? A. I had all of them in mind because we cannot get the gas we have available to us. We don't have the facilities to transport it. That would be 1, 2, 3, 4, 211, 5, and 6, we cannot get any more gas from Panhandle. So that is practically in the same condition.

Q. At the bottom of page 90, commencing with line 21, and continuing over to the top of page 91, you testified yesterday as follows:

"Trial Examiner: These transmission lines, these 903 miles, perform what specific function?"

"The Witness: The 903 miles of transmission line as classified, perform the function of moving gas in one case from the Ohio River northward, and in the other case from Monroe eastward of out-of-state gas as well as of gas produced and purchased in the State of Ohio, through these lines to our local distribution areas."

Would the function of those lines, Mr. Robinson, which you there described be changed if you were delivering gas at the town border stations to other distributing companies rather than to your own distribution facilities? A. I don't know what their requirement could be. If it were a requirement for more or less it naturally would be changed.

Q. Assuming the same requirements? A. No, it couldn't be any different if they were the same requirements.

Mr. Purdue: That is all.

212 Mr. Fitzgerald: I would like to cross examine this witness, Mr. Trial Examiner. However, I believe Judge Morgan would have the privilege of cross examination before me if he so desires.

Mr. Morgan: We have no cross examination.

By Mr. Fitzgerald:

Q. Calling your attention to some of your testimony this morning, Mr. Robinson, with reference to the special permission granted to East Ohio to change their accounting system to a system of accounts similar to the Federal Power Commission, is it your understanding that your system of accounts, as it now exists or would exist after new accounts would, if they were put into effect, are still under the jurisdiction of the Ohio Public Utilities Commission?

A. Yes.

Q. Is it your understanding that in the making of that application that that was a special permission to East Ohio, and not a general provision governing the other utilities in the State of Ohio? A. I didn't quite follow you. You mean, special permission from the Ohio Commission?

Q. From the Ohio Commission; yes. A. Yes, sir. As I stated this morning, we confer with them and endeavor to keep them informed on our major points.

Q. In the asking for this special permission, that permission was confined to your company alone in the order of the Public Utilities Commission? A. That is correct. It is all we ever discussed.

Q. Now, in the event that for some reason the Public Utilities Commission should withdraw their special permission, is it your understanding that your company would have to conform its accounts to the uniform system of ac-

counts now existing in the State of Ohio under the Public Utilities Commission? A. Yes, sir.

Q. Calling your attention to Exhibit 4, a map of the East Ohio operation, is it your understanding that all these transmission lines, including all the other property owned and operated by East Ohio, are at the present time under the jurisdiction of the Public Utilities Commission? A. Yes, sir.

Q. Calling your attention to a recent rate case involving the City of Cleveland and East Ohio Gas Company, which was before the Public Utilities Commission, in the course of that litigation was the East Ohio Company required to value and inventory all of the transmission properties shown on this map at the request of the Public Utilities Commission? A. Yes, sir, and inspection was done in co-operation with the engineers of the Public Utilities

214. Commission.

Q. In other words, at all times the East Ohio Gas Company has understood that these transmission lines are under not only the control but the supervision of the Public Utilities Commission? A. Yes, sir.

Q. Calling your attention to the transmission lines that run up to Gross Farms, am I correct in understanding that you mentioned yesterday that in some instances on those transmission lines in that area, leading into that one central point, that gas at certain times of the year goes in both directions, both north and south? A. The gas up as far as Gross Farm for the most part goes north; at Gross Farm our system is so flexible that we can deliver the gas from one line to another, or in most any direction we need the gas to supply a market in our general distribution area, and it is so operated that way in winter and in particular on peak days.

Q. Well, is it true that in the Gross Farm areas, I understand from the legend here, you have certain underground storage facilities? A. That is correct; outlined in dark blue.

Q. During certain portions of the year is it not true that Ohio produced gas as well as out of the state gas is stored in those storages? A. That is correct.

215 Q. And therefore transmission lines north of Gross Farm could at some time during the course of the year be carrying gas which formerly had been interstate gas as well as intrastate gas? A. As a matter of fact, the operation is that where gas comes in from the Maumee line at Brush Farm some of that gas in summertime is brought south and actually stored in the storage pool.

Q. Now, Mr. Robinson, calling your attention to some of the practical applications of the inventories, and what not, in connection with these lines, I understood you to say yesterday, I believe, that there oftentimes are great expenses involved in the valuation and inventories of these lines for the purposes of submitting that information to the Public Utilities Commission. A. Yes, sir. It all costs money.

Q. How do you handle that expense on your accounts? A. That is expense, a regular charge to expense. That is the normal work. When we have an unusually large job such as a rate case preparation or a general valuation, the Commission usually authorizes that to be amortized over a definite period of time, varying from five years for the most part.

Q. Is it your understanding that that expense is one of the items that goes into consideration of a rate for 216 municipalities in this vicinity? A. Yes, sir.

Q. In other words, that is a direct item that might materially affect the ultimate consumer rate on your system. A. Yes, sir.

Q. Is it your understanding, since these lines are under the jurisdiction of the Public Utilities Commission, that any expense in connection with any inventory, changing of accounts, and so on and so forth, regardless of where that information may be desired from, that that would be an allowable expense in a rate matter before the Public Utili-

ties Commission in which East Ohio is involved? A. Yes, sir; it would have to be.

Q: And generally, from your own knowledge the tendency of the additional expense in reference to the ultimate consumer rate, would it tend to lower or increase it? A. It would increase it, sir.

Mr. Fitzgerald: That is all.

* * * * *

255 Trial Examiner: Mr. Fitzgerald, Assistant Attorney General for the Public Utilities Commission of Ohio, has requested leave to make a statement with reference to the four docket numbers on which we have just concluded taking testimony.

Mr. Fitzgerald, you may proceed to make your statement.

Mr. Fitzgerald: If it please the Examiner I would like to have the privilege of reading the statement. If I may, I would like to sit down and read it so I may expedite the hearing and not take too much time!

256 Trial Examiner: You may.

Mr. Fitzgerald: If the Examiner please, in order to elaborate on the position of the Public Utilities Commission of the State of Ohio, previously stated, I would like to say that the Ohio Commission have found the activities of the Federal Power Commission in taking over the problems of setting interstate gas rates, particularly in the instance of affiliated companies, most helpful.

In former years and in former rate cases the interstate gas rate between affiliated gas companies—where interstate gas rates between affiliated gas companies were concerned, the determination of the reasonableness of the rates proved to be a great burden on the Ohio Commission.

By the enactment of the Natural Gas Act the State Commissions were relieved of this burden, and rightly so. It is also the opinion of the Ohio Commission that the interstate gas rate between a non-affiliated company, which it could not review, should be properly subject to regulation.

Since the constitution limited such review by any State agency the Ohio Commission welcomed the Natural Gas Act and the authority of the Federal Power Commission in filling the gap in the existing essential regulatory procedure.

A cooperative jurisdictional field wherein the Federal agency regulates interstate rates and the State Commissions regulate local rates and activities present a 257 complete and harmonious regulatory system.

However, I do not believe that duplication of regulations was desired or intended by Congress in the enactment of the Natural Gas Act. In reading the legislative history as to the purpose of the Natural Gas Act it would seem to me that the intention of Congress was to avoid duplication of regulation, and likewise in no way disturb the States in the exercise of their jurisdiction.

Regulation in the utility field has proven to be an expensive enterprise, and in the long run all regulatory expense must be borne by the consumers. Any duplication of regulation would double the burden imposed upon the gas user.

As I stated at the opening of the hearing, the State of Ohio and the Public Utilities Commission of Ohio appeared before the Circuit Court of Appeals when the matter of the Federal Power Commission's jurisdiction as to East Ohio-Gas Company came before the Courts.

It appeared then that the information and data which the Federal Power Commission sought would involve a substantial expense, and such information could not be helpful to the Ohio Commission in its determination of local rates under the Ohio law, which requires the rate base to be fixed at present value.

In this particular instance duplication of regulatory jurisdiction would have been generally harmful to the Northern Ohio Gas users. 258

As the testimony has developed at the present hearing the practical situation is the same now as in the former hearing, except that the cost to the East Ohio Gas Com-

pany to comply with the various accounting and other orders of the Federal Power Commission is much greater than in the original situation.

The Ohio Commission has from the inception of the East Ohio Gas Company regulated all of the rates, securities issued, property accounting and valuation, and all other activities in connection with the procuring, transmission and distribution of gas in the State of Ohio.

The Ohio law specifically directs the Ohio Commission to assume such regulatory jurisdiction over all of the utility property located in the State, and has empowered the Ohio Commission with authority to secure all of the information required for such regulatory purposes.

In this instance the Ohio Commission does not need the assistance of the Federal Power Commission or any Federal agency to discharge their statutory duties to the citizens of the State with reference to the East Ohio Gas Company property.

It is undisputed that the operation of East Ohio is wholly intrastate, and is confined to the production and distribution of natural gas in some 69 Ohio cities and adjoining communities.

For the Federal Power Commission to compel securing of additional information, and to insist upon compliance with additional future requirements as to accounting and the securing of certificates of public convenience and necessity, all at great expense, is in this instance a great disservice and burden to Ohio Gas users. It adds a substantial item to the operating expenses which to our minds is unnecessary.

This undesirable situation could be avoided by our practical interpretation of the Natural Gas Act, which would limit the jurisdiction of the Federal Power Commission to the filling in of the gaps in State regulation, as I believe Congress clearly intended.

I am confident that Congress did not intend that the jurisdiction of the Federal agency should become dual in

connection with a purely intrastate local distribution company, such as East Ohio, and to subject such a company to dual regulation involving the same properties—once by the Ohio Public Utilities Commission under Ohio law, and again, by the Federal Power Commission.

Therefore, in view of what has just been said, the State of Ohio and the Public Utilities Commission of Ohio oppose

the assumption of jurisdiction of the Federal Power
260 Commission in this instance as unwarranted and unnecessary, and no doubt illegal invasion of the powers of the State of Ohio to regulate local gas distribution utilities which powers were clearly preserved to the States under the Congressional intent and the provisions of the Natural Gas Act.

That is all I have to say on that subject.

I wish to thank you very much for the opportunity of participating in this hearing.

Trial Examiner: You are entirely welcome, Mr. Fitzgerald, I assure you.

Your statement, of course, is tantamount to an argument on the issues and the evidence in this hearing we have held so far.

I wish to give counsel for the parties an opportunity to likewise express their views in oral argument on the evidence and issues in the docket numbers we have just concluded hearing.

Mr. Dougherty!

Mr. Dougherty: If the Examiner please, I think in the interest of conserving time that any extended oral argument by counsel on this particular section of these proceedings would not be particularly helpful. It would seem to me that at the close of the four dockets if it is desired to file briefs that matter may be considered then, or oral argument as might seem best to the Examiner or
261 counsel.

* * * * *

**Excerpts from Testimony and Proceedings of Hearing on
Docket No. G-458, Held April 21, 1943.**

3153 **J. French Robinson**, a witness called on behalf of the Applicant, having been first duly sworn, was examined and testified as follows:

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3186 Cross-examination

By Mr. Reeder:

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3192 Q. Do you have load dispatchers in The East Ohio Gas Company? A. We have a gas dispatcher.

Q. Where does he operate? A. His office is in our main building, Cleveland, Ohio.

Q. Will you describe his operations? A. The duty of the gas dispatcher is to supply all of our markets with gas as nearly all of the time as we can. He is in constant touch with our field superintendents in relation to turning off wells of our own and gas purchase contracts in the State of Ohio. He is in constant touch with the dispatcher of the Hope Natural Gas Company in regard to pressures, and we operate mainly by pressure, which in turn controls volumes, as required, and as can be had. Those are the principal duties of our gas dispatcher.

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3204 Q. Will you state how far north of those lines running out of the Pipe Creek station and Clarington station carry nothing but Hope gas? A. The first intermingled Ohio gas occurs in the western portion of Harrison County, which would be roughly forty miles north of Clarington station.

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3206 Q. Now, Mr. Robinson, is some gas sent to the eastward out of Gross Farm station to Marion, Niles and Youngstown? A. Yes, sir.

Q. And is that all Hope gas, with the exception 3207 of a small amount of Ohio gas that is mingled with it south of Gross Farm station as you have described? A. Yes, sir.

Q. And what is the usual pressure in that 14-inch and that 16-inch Youngstown branch? A. The operating pressure of those lines varies between about 150 pounds and 185 pounds at the Gross Farm.

3210 Q. Mr. Robinson, will you state what pressures are maintained in the East Ohio transmission lines from Gross Farms Station north to the Cleveland city gate, as a matter of the usual and ordinary course of business?

A. That varies from between 150 pounds at Gross Farm, to 100, possibly a little above 200 pounds, reaching an average pressure in the border stations, varying between 60 and 100 pounds, at Cleveland.

Q. What are these border stations? A. Border stations are the points where the gas from the transmission line is passed over into the high pressure distributing lines.

3211 Q. Are these border stations measuring stations? A. Not necessarily. I am speaking of border stations, as regulating stations. We do have measuring stations at our border stations, too.

Q. And I believe you testified that there is a Cleveland Division high pressure distribution system. Will you describe what that is? A. That is nothing more than a system of pipe lines, running around the outskirts of Greater Cleveland, and through the city which carries the high-pressure distribution gas to points throughout the area where it is converted to low pressure distribution.

Q. And will you state what pressure is maintained after the gas gets into the high pressure distribution system? A. It varies between 30 and 50 pounds, normally.

Mr. Cockley: Are you now talking about merely the Cleveland area, or the whole system?

The Witness: The Cleveland area, I understood that is what we were discussing.

3212 Q. Mr. Robinson, what is the pressure in the low-pressure distribution main? A. Approximately 6 ounces between, 4 and 6 ounces.

Q. I understood you to testify that in the high pressure distribution systems, the pressure was about 50 or 60 pounds.

Did I misunderstand? A. That is correct, 30 to 60 pounds, you might say.

Q. And then, when you get into the low pressure distribution system, what is the pressure? A. 4 to 6 ounces.

Q. There is a substantial reduction in pressure then, between the high pressure distribution system, and
3213 the consumers burners, is there not? A. That is where it goes, that is where the major cut is made down to where it goes into the low pressure distribution system.

Q. And will you describe the equipment or facilities which reduce the pressure from 30 to 60 pounds, in the high pressure distribution systems, to 6 ounces in the low pressure distribution systems? A. That is done by a device, known in the industry as regulator, or regulators, as the case may be. Sometimes it takes more than one regulator to cut the pressure down. You see, they are set automatically, the regulator receives the gas on one side of it, at various pressures, and it lets it out on the other side, at whatever is set for, 4 to 6 ounces, and it is purely mechanical, or automatic.

3214 Q. What is the pressure maintained in the 14 and 16 inch Youngstown branch lines, running northeastward from Gross Farm to the Youngstown area? A. That varies. I think I stated a little while ago that that pressure was around 150 to 175 pounds.

Q. And when— A. (Interposing) At the Gross Farm.

Q. Yes, and when that gas purchased from the Hope Company and moving eastward out of Gross Farm reaches the Youngstown area, is there a Youngstown high pressure

distribution system similar to that which you have described for the Cleveland area? A. Yes, sir.

Q. And that pressure is maintained in that system? A.

Approximately the same as in the Cleveland system.

3215 Q. And is there a low-pressure Youngstown distribution system similar to that in the Cleveland area? A. Yes, sir.

Q. And now will you describe the movement of gas purchased from the Hope Natural Gas Company, northward from Gross Farms Station to the border of the city of Akron, for the Akron area? A. It is similar to the movement not only of Hope gas, but of commingled gas from Gross farms north to the border stations in and around Akron, just the same as for Cleveland.

Q. And there is a high pressure Akron distribution system is there? A. That is correct.

Q. And then, a low pressure Akron distribution system, similar to those in the Cleveland and Youngstown area? A. Yes, sir; that is our standard practice of operation.

3219 Q. Now, what is the volume of gas purchased from Hope which is transmitted through trunk pipe lines 2, 3, 4, and 5, on a peak day? A. Approximately 200,000,000 feet of gas pass through these lines.

3220 Q. Mr. Robinson, will you describe the flow of gas from the Hastings station to the city gate of Cleveland on a typical peak day?

3221 The Witness: I don't know what you mean by "describe it", Mr. Reeder.

As I have previously stated, Hastings discharges gas at about 330 pounds pressure. The gas then moves in a westerly direction through the Hope Lines, and the East Ohio Lines from the Ohio River,—moves that gas northward from the Gross Farm, where, on a peak day, it normally

is not restricted at all, because we need all the capacity we have, and it goes on past Gross Farm, portions of it commingled with Ohio gas, to the distribution centers in Cleveland, as previously described, by going through the high pressure systems first, and then from the high pressure systems into the low pressure systems and then on to the various consumers.

By Mr. Reeder:

Q. Well, Mr. Robinson, is it a fact that the movement is continuous from the places of production or gathering in West Virginia to the Cleveland City Gate, where the pressure of the gas is reduced for distribution? A. Yes, sir; gas moves in a continuous process. It is not stopped dead at any point that I know of.

3230 Cross Examination

By Mr. Spohn:

3235 Q. I believe you referred the other day to your main transmission lines, as "trunk lines"? A. Yes, sir; they are quite often called "trunk pipe lines".

Q. And those are the statements, I believe, you made in your testimony from certain lines you referred to as high pressure distribution lines? A. That is correct.

Q. And a third category I believe you mentioned is low pressure lines? A. That is correct. Those are in accordance with the methods of bookkeeping and so designated as transmission lines or trunk pipe lines and high pressure distribution systems and low pressure distribution system.

Q. You keep your accounts according to those 3236 functions? A. Yes, sir.

Q. Are your operating personnel so grouped also? A. To some extent. The East Ohio Gas Company trunk pipe line system is manned, by specific groups of men.

The low pressure distribution, and the high pressure distribution is, for the most part, handled by the same personnel.

There is, at times, overlapping. We get into trouble on the main line and the personnel of the distribution system will assist, and if something happens to a distribution system near the main line, that force will assist, so that while they are more or less separate groups, there is an overlapping there.

Q. In time of emergency need, you call in all your personnel? A. Not only emergency, whenever anything happens whichever is the most economical or convenient to use, we use them.

Mr. Spohn: In the ordinary course of events, you have permanent crews and other personnel for the trunk system, and others for the high pressure distribution or low pressure distribution systems?

The Witness: That is fundamentally correct.

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Exhibit No. 1: Item 1, at Hearing on Docket No. G-115 et al.

1513 — UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners: Clyde L. Seavey, Chairman; Claude E. Draper, Basil Manly, Leland Olds, John W. Scott.

September 6, 1939.

ORDER NO. 63

**Order Prescribing Form of Financial and Statistical Report
For Natural-Gas Companies as Defined in the Natural
Gas Act (52 Stat. 821)**

The Federal Power Commission, acting pursuant to authority granted by the Natural Gas Act, particularly Sections 10(a) and 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act,

(1) Hereby adopts, promulgates and prescribes for use of natural-gas companies as defined in the Natural Gas Act (52 Stat. 821) the accompanying form of Financial and Statistical Report, designated as F.P.C. Form No. 133 and comprising

General Instructions

Excerpts from the Natural Gas Act

**Corporations Controlled by Respondent
Corporate Controlled Over Respondent
Officers and Directors**

Security Holders and Voting Powers

Comparative Balance Sheet

Investments in Associated Companies

Capital Stock

Long-Term Debt Outstanding (Bonds and Long-Term Notes)

Advances from Associated Companies (Long-Term)

Utility Plant

Income and Earned Surplus Account

1514

Gas Operating Revenues

Gas Operating Expenses

Sales of Gas—By Communities

Sales to Other Gas Utilities

Gas Purchased

Gas Transported for Others

Gas Produced, Purchased, and Disposed of

Natural Gas Land Acreage

 A. **Natural Gas Land Acreage**

 B. **Estimated Reserves by Fields**

 Number of Gas and Oil Wells

Compressor and Booster Stations

Gathering Mains

Transmission Mains

Natural Gas Production Statistics

Verification; and

(2) Hereby *orders* that each natural-gas company as defined in the Natural Gas Act (52 Stat. 821) shall file

shall be subdivided so as to show the amounts applicable to (a) gas plant in service, (b) gas plant leased to others, and (c) gas plant held for future use.

1717 The procedure followed in determining the original cost of the gas plant acquired as operating units or systems shall be described in sufficient detail so as to permit a clear understanding of the nature of the investigations and analyses which were made for that purpose.

Where estimates are used in arriving at original cost or the amount to be included in Account 100.5, a full disclosure of the method and underlying facts shall be given. The proportion of the original cost of each acquisition which has been determined from actual recorded costs and the proportion estimated shall be shown for each functional class of plant. In addition there shall be furnished in respect to each predecessor or vendor company for which complete construction costs are not available, a description of such plant records as are available, including the years covered thereby.

Statement C showing any amounts arrived at by appraisals, recorded prior to January 1, 1940, in the gas plant accounts (and not eliminated) in lieu of cost to the reporting company. This statement should describe the appraisal and give the complete journal entry at the time the appraisal was originally recorded. If the entry had the effect of appreciating or writing-up the gas plant account, the amount of the appreciation or write-up should be traced, by proper description and explanation of changes, from the date recorded to January 1, 1940.

Statement D showing in detail as of December 31, 1939, gas plant as classified in the books of account immediately prior to reclassification, including under appropriate descriptive headings, any unclassified amounts applicable jointly to the gas department and other departments of the utility.

Gas Act (52 Stat. 821) which are included in Classes A and B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies subject to the provisions of the Natural Gas Act, for the year 1941, the accompanying form of Annual Report designated as FPC Form No. 133 (1941).

- (2) Hereby *orders* that each natural-gas company, as defined in the Natural Gas Act (52 Stat. 821) which is included in Classes A and B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies subject to the provisions of the Natural Gas Act, shall file with the Commission an original and two conformed copies, duly executed, of such Annual Report on the aforesaid form FPC Form No. 133 (1941), for the year 1941, said Annual Report to be filed on or before the last day of the third month following the close of the calendar year or other established fiscal year.
- (3) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

LEON M. FUQUAY,
Secretary

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with the Commission three executed copies of such Financial and Statistical Report on the aforesaid form (F.P.C. Form No. 133) for the year 1939, said report to be filed on or before February 29, 1940.

By the Commission.

LEON M. FUQUAY,
Secretary.

Exhibit No. 1: Item 5, at Hearing on Docket No. G-115 et al.

1539

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

November 3, 1939.

ORDER NO. 69

In the Matter of:

Uniform System of Accounts to be Prescribed for Natural-Gas Companies Subject to the Provisions of the Natural Gas Act

Docket No. G-137

Order Prescribing a System of Accounts for Natural-Gas Companies Under the Natural Gas Act

It appearing to the Commission that:

- (a) Section 8(a) of the Natural Gas Act authorizes the Commission to prescribe a system of accounts to be kept by natural-gas companies and to classify such natural-gas companies and prescribe a system of accounts for each class;
- (b) Copies of a tentative draft, dated May 15, 1939, of a uniform system of accounts to be prescribed for natural-gas companies subject to the provisions of the Natural Gas Act, were, on June 20, 1939, sent by the Commission to State commissions, natural-gas

Statement E showing the adjustments necessary to state, as of January 1, 1940, Account 100, Gas Plant, including its subaccounts, Account 107, Gas Plant Adjustments, and amount of common utility plant includible in Account 108, Other Utility Plant, as prescribed in the Uniform System of Accounts.

Statement F showing gas plant (balance sheet Account 100) as of January 1, 1940, classified according to the subaccounts and the detailed accounts thereunder prescribed in the Uniform System of Accounts, effective on that date, and showing also the amount includible in Account 107 Gas Plant Adjustments, and the amount of common utility plant includible in Account 108, Other Utility Plant.

Statement G showing a comparative balance sheet, as of January 1, 1940, reflecting the accounts and amounts appearing in the books before the adjusting entries have been made, and after such entries shall have been made. The balance sheet shall be classified by the accounts set forth in the Uniform System of Accounts Prescribed for Natural Gas Companies.

Statement H giving a suggested plan for depreciating, amortizing, or otherwise disposing of, in whole or in part, the amounts, as of January 1, 1940, includible in Account 100.5, Gas Plant Asquisition Adjustments, and Account 107, Gas Plant Adjustments.

Statement I furnishing the following statistical information relative to gas plant:

Production Plant

Manufactured Gas

Show separately for each producing plant the name and location of plant, date of original construction, type of plant (whether coal gas, coke ovens water gas, etc.), rated 24-hr. capacity in m.e.f. of each unit and of the total plant, and date of installation of each unit installed after original construction. Show also the

Exhibit No. 1: Item 21, at Hearing on Docket No. G-115 et al.

1841

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper,
Basil Manly, John W. Scott and Clyde L. Seavey.

March 3, 1942

ORDER NO. 69-A

**Prescribing Accounting With Respect to Account 100.5,*
Gas Plant Acquisition Adjustments**

The Commission, having under consideration the matter of uniform systems of accounts, particularly the text of Account 100.5,* Gas Plant Acquisition Adjustments, of the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies by order of the Commission adopted November 3, 1939; and

It appearing to the Commission that:

- (a) Gas Plant Accounts Instruction 2-A of the said Uniform System of Accounts provides that each utility** shall classify its gas plant in accordance with the Gas Plant Accounts as prescribed in said Uniform System of Accounts;
- (b) Instruction 2-C of said Gas Plant Accounts provides that the detailed Gas Plant Accounts of each utility shall be stated on the basis of cost to the utility of gas plant construction by it and on the basis of original cost, estimated if not known, of gas plant acquired by it as an operating unit or system; and further, that the difference between the original cost as above, and the cost to the utility of gas plant includable in

*Account 100.5 for Classes A and B Natural Gas Companies as hereinafter used refers also to Accounts 1100.5 and 2100.5 for Classes C and D Natural Gas Companies. Likewise other account references for Classes A and B Natural Gas Companies apply also to comparable accounts for Classes C and D Natural Gas Companies.

**The term "utility" as used herein means any natural gas company to which the Commission's Uniform System of Accounts is applicable.

companies and other interested persons and organizations, and comments and suggestions with respect thereto were requested to be filed with the Commission on or before July 10, 1939;

- (c) The Commission received comments and suggestions with respect to said tentative draft from certain State commissions, natural-gas companies and others;
- (d) On September 6, 1939, the Commission adopted an order in Docket No. G-137 fixing September 27, 1939, as a date for hearing for the purpose of receiving evidence with respect to the adoption of the proposed uniform system of accounts for natural-gas companies from any State commission, natural-gas company, or person, corporation or organization having an interest in the matter;
- (e) Said order of September 6, 1939, was sent by the Commission to State commissions, persons engaged in the natural-gas business and other persons and organizations, and a copy thereof was duly published in the Federal Register in the issue of September 12, 1939;

1540 (f) A public hearing in this matter was held on September 27 and 28, 1939, before the Commission sitting *en banc*, and oral and documentary evidence was duly received from the Comimssion's staff, State commissions, a Committee representing the American Gas Association, representatives of the natural-gas industry and others; and memorandum briefs were subsequently filed by representatives of the natural-gas industry pursuant to permission granted at said hearing;

The Commission, having considered the record made in this proceeding by oral and documentary evidence and briefs filed, and acting pursuant to authority granted by the Natural Gas Act (52 Stat. 821), particularly Sections

Accounts 100.1 to 100.4, inclusive, after giving effect to the depreciation, depletion or amortization recorded by the accounting utility at the time of acquisition, shall be recorded in Account 100.5, Gas Plant Acquisition Adjustments.

1842 (c) Subdivision C of Account 100.5, Gas Plant Acquisition Adjustments, provides as follows:

The amounts recorded in this account with respect to each property acquisition shall be depreciated, amortized, or otherwise disposed of, as the Commission may approve or direct.

The Commission finds that:

- (1) Studies of original cost, as provided for in paragraph (a) above, are being completed by utilities and amounts entered in the appropriate primary Gas Plant Accounts in accordance with Instruction 2-C above referred to, or will be so entered in said accounts in the near future;
- (2) It is appropriate to consider the matter of disposition of such amounts as may be lodged in said Account 100.5, Gas Plant Acquisition Adjustments; and

The Commission orders that:

- (A) Debit amounts in Account 100.5, Gas Plant Acquisition Adjustments, may be charged to Account 414, Miscellaneous Debits to Surplus, in whole or in part, or may be amortized over a reasonable period by charges to Account 537, Miscellaneous Amortization, without further order of the Commission;
- (B) Should a utility desire to account for debit amounts in Account 100.5, Gas Plant Acquisition Adjustments, in any manner different from that indicated in (A) above, it shall petition the Commission for authority to do so;
- (C) Debit balances shall not be determined by application of credit amounts thereto;

original cost according to the System of Accounts for each plant, by Accounts 311 to 325, inclusive.

Natural Gas

For each "field" includable in Account 100.1, Gas Plant in Service, furnish the number of acres each of gas producing lands owned, of gas producing lands leased by the company, and of land on which gas rights only are owned, as included in Accounts 330.1,

1718 330.2, 330.3, respectively. The same information, classified by subaccounts, shall be furnished for producing and nonproducing acreage includable in Account 100.2, Gas Plant Leased to Others, and in Account 100.4 Gas Plant Held for Future Use.

For each "field" state number of feet of each size pipe used in Field Gathering Lines.

For each "field" state number of wells included in Accounts 332.1 and 332.2, segregating to show the number of wells on each type of producing lands classified under Accounts 330.1, 330.2, 330.3.

When pumping or compressing plants exist within the Production Plant, include the same information as that requested for Compressor Stations under Transmission Plant.

State type and character of Purification Equipment and Residual Refining Equipment included in Accounts 335 and 336, respectively.

Show the original cost according to the System of Accounts for natural gas production plant by each "field" and by Accounts 330.1 to 337.

Storage Plant

Show separately for each location the name of plant, date of construction, type and total capacity (m.e.f.) of each gas holder. State also the original cost according to the System of Accounts for each location, by Accounts 341 and 342.

If depleted gas fields are being repressed, the statements furnished shall reflect the number of acres in-

8(a), 10(a) and 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act, *orders* that:

- (A) The accompanying system of accounts, entitled "Uniform System of Accounts Prescribed for Natural-Gas Companies Subject to the Provisions of the Natural Gas Act," and the rules and regulations contained therein, be and they are hereby adopted;
- (B) Said system of accounts and said rules and regulations contained therein be and the same are hereby prescribed and promulgated as the system of accounts and rules and regulations of the Commission to be kept and observed by natural-gas companies subject to the jurisdiction of the Commission, to the extent and in the manner set forth therein;
- (C) Said system of accounts and rules and regulations therein contained shall, as to all natural-gas companies now subject to the jurisdiction of the Commission, become effective on January 1, 1940, and as to any natural-gas company which may hereafter become subject to the jurisdiction of the Commission, they shall become effective as of the date when such natural-gas company becomes subject to the jurisdiction of the Commission;
- (D) A copy of said system of accounts and rules and regulations contained therein be forthwith served upon each person which may be subject to the jurisdiction of the Commission under the Natural Gas Act;
- (E) The Secretary of the Commission shall cause this order and the system of accounts prescribed thereby to be forthwith published in the Federal Register.

By the Commission.

LEON M. FUQUAY,
Secretary.

volved and the original cost according to the System of Accounts (Accounts 341 and 342).

Transmission Plant

State the number of feet of each size of main.

State separately for each compressor boosting station the name of plant, location, date of original construction, rated capacity, type and character of power unit and rated capacity and type of compressor units. Also state the capacity, type and date of installation of each additional power or compressor unit. Show for each station the original cost according to the System of Accounts by Accounts 351, 352 and 354 and by prescribed subaccounts.

Distribution Plant

State number of feet of each size of main and the number of active meters, house regulators and services. Give a general description of the district regulators and the number, by sizes.

Where pumping or compressor stations exist within the distribution plant, include the same information requested for similar stations under transmission plant.

General Plant

Describe the principal structures and improvements.

State the number and type of transportation vehicles and appurtenant equipment.

Give a description of store, shop and laboratory equipment and miscellaneous equipment.

Furnish maps, drawn to scale, upon which indicate transmission mains, location of production plants (artificial and natural), producing and nonproducing leaseholds (indicating thereon producing wells, dry holes and depleted wells), gathering systems, booster and compressor stations, communities served (noting as to wholesale or retail) and large industrial consumers. Where gas is purchased from or sold to other gas

(D) Credit amounts in Account 100.5, Gas Plant Acquisition Adjustments, shall be accounted for as directed by the Commission;

(E) Where a utility, subject to both Federal and State regulations, petitions the Commission in accordance with paragraph (B) above, the cooperative procedure heretofore adopted between Federal and State Commissioners shall be invoked;

(F) Disposition of amounts in Account 100.5, Gas Plant Acquisition Adjustments, as above directed, is for accounting purposes only and such disposition shall not be construed as determining or controlling the consideration to be accorded these items in rate or other proceedings, nor shall anything contained herein prevent the Commission from subsequently ordering the amounts to be charged directly to Account 414, Miscellaneous Debits to Surplus, or from modifying the adopted amortization period.

1843

By the Commission.

LEON M. FUQUAY,
Secretary

* * * * *

Exhibit No. 2: Item 1, at Hearing on Docket No. G-115 et al.

1965 UNITED STATES OF AMERICA
 FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

November 24, 1942

ORDER NO. 100

Order Prescribing Form of Annual Report for Natural-Gas Companies (Classes A and B), FPC Form No. 133

The Federal Power Commission, acting pursuant to authority granted by the Natural Gas Act (52 Stat. 821), par-

Exhibit No. 1: Item 8, at Hearing on Docket No. G-115 et al.

1716

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper, John W. Scott, Clyde L. Seavey. Basil Manly, not participating.

April 9, 1940

ORDER NO. 73**Order Requiring Submission of Supplemental Data in Connection With Gas Plant Instruction 2-D of the Uniform System of Accounts Under the Natural Gas Act**

It appearing to the Commission:

(1) That Gas Plant Instruction 2-D of the Uniform System of Accounts Prescribed for Natural Gas Companies, provides as follows:

"D. Not later than two years after the effective date of this system of accounts, each utility shall have completed the studies necessary for classifying its gas plant as of the effective date of this system of accounts in accordance with the accounts prescribed herein and it shall submit to the Commission the entries it proposes to make to carry out the provisions of this instruction. It shall submit, also, a comparative balance sheet showing the accounts and amounts appearing in its books as of the effective date of this system of accounts and the accounts and respective amounts as of the same date after the proposed entries shall have been made."

(2) That it is necessary in the public interest in carrying out the provisions of the Natural Gas Act and desirable in order to consider adequately the adjusting entries specified in the above-named instruction that data can be furnished relative to the history of each natural gas company, its acquisitions of gas operating units or systems, the

ticularly Sections 10(a) and 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act, *orders* that:

- (1) The accompanying FPC Form No. 133, Annual Report for natural-gas companies, as defined in the Natural Gas Act, which are in Classes A and B, as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies, subject to the provisions of the Natural Gas Act, be and the same hereby is approved;
- (2) Each natural-gas company which is in Class A or B shall file with the Commission an original and two conformed copies, duly executed, of such Annual Report, FPC Form No. 133, for the year 1942 and each year thereafter; said Annual Report is to be filed on or before the last day of the third month following the close of the calendar year, or other established fiscal year;
- (3) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

FEDERAL POWER COMMISSION
G-115, 399, 400, 401, 695, 696
LEON M. FUQUAY,
Secretary

utilities, indicate location of measuring stations or gates. If scale maps are not available, furnish sketch maps upon which should be indicated approximate distances between the locations above specified.

By the Commission.

LEON M. FUQUAY,
Secretary

* * * * *

Exhibit No. 1: Item 11, at Hearing on Docket No. G-115 et al.

1721 UNITED STATES OF AMERICA
 FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

January 14, 1941

ORDER NO. 80

Order Prescribing Form of Financial and Statistical Report for Natural-Gas Companies as Defined in the Natural Gas Act (52 Stat. 821), (Classes A, B, C, and D), FPC Form No. 133 (1940)

The Federal Power Commission, acting pursuant to authority granted by the Natural Gas Act, particularly Sections 10(a) and 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act,

- (1) Hereby adopts, promulgates and prescribes for use of natural-gas companies as defined in the Natural Gas Act (52 Stat. 821) which are included in Class A, B, C, or D as defined in the Commission's Uniform System of Accounts prescribed for natural-gas companies subject to the provisions of the Natural Gas Act, for the year 1940 the form of Financial and Statistical Report, designated as FPC Form No. 133, adopted and prescribed for the year 1939 by Commission Order No. 63, dated September 6, 1939.

original cost thereof, the amounts entered in the books in respect thereto, the method of determining original cost, and other related information.

It is ordered:

That in submitting the information called for in Gas Plant Instruction 2-D of the Uniform System of Accounts for Natural Gas Companies each company shall furnish, insofar as applicable, the following statements, in triplicate, on paper cut or folded to $8\frac{1}{2}$ inches wide by 11 inches long, and properly sworn to by the officer in responsible charge of their compilation:

Statement A showing the origin and development of the company, including, particularly, a description (giving names of parties and dates) of each consolidation and merger to which the company, or a predecessor, was a party and each acquisition of a gas operating unit or system. Any affiliation existing between the parties shall be stated.

Statement B showing for each acquisition of a gas operating unit or system by the reporting company or any of its predecessors: (1) the original cost (estimated only if not determinable from existing records), (2) the cost to the acquiring company, (3) the amount entered in the books as of the date of acquisition, (4) the difference between the original cost and the amount entered in the books, (5) a summary of all transactions affecting such difference, including retirements, between the date of each acquisition and January 1, 1940, and (6) the amount of such difference remaining at January 1, 1940.

If the depreciation, retirement or amortization reserve was adjusted as of the date of acquisition and in connection therewith, a full disclosure of the pertinent facts shall be made.

The amount to be included in Account 100.5, Gas Plant Acquisition Adjustments, as of January 1, 1940,

Exhibit No. 2: Item 2, at Hearing on Docket No. G-115 et al.

1966

UNITED STATES OF AMERICA
 FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper,
 Basil Manly, John W. Scott and Nelson Lee Smith.

December 21, 1943

ORDER NO. 113**Order Prescribing Form of Annual Report for Natural-Gas Companies, as Defined in the Natural Gas Act (52 Stat. 821), (Classes A and B), FPC Form No. 2**

The Federal Power Commission, acting pursuant to authority granted by the Natural Gas Act, particularly Sections 10(a) and 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act, *orders* that:

- (1) The form of Annual Report for natural-gas companies as defined in the Natural Gas Act (52 Stat. 821) which are included in Classes A and B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies subject to the provisions of the Natural Gas Act, heretofore adopted and designated as FPC Form No. 133, by Commission Order No. 100, dated November 24, 1942, including the instructions and schedules therein contained, be and the same is hereby readopted and redesignated as FPC Form No. 2;
- (2) Each natural-gas Company as defined in the National Gas Act (52 Stat. 821) which is included in Classes A and B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies subject to the provisions of the Natural Gas Act, shall hereafter, file with the Commission annually for each year beginning January 1, 1943, or next thereafter (if the established fiscal year is other

- (2) Hereby orders that each natural-gas company as defined in the Natural Gas Act (52 Stat. 821) which is included in Class A, B, C, or D as defined in the Commission's Uniform System of Accounts prescribed for natural-gas companies subject to the provisions of the Natural Gas Act, shall file with the Commission three executed copies of such Financial and Statistical Report on the aforesaid form (FPC Form No. 133) for the year 1940, said report to be filed on or before March 31, 1941.
- (3) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Leon M. Fuquay,
Secretary

* * * * *

Exhibit No. 1: Item 16, at Hearing on Docket No. G-115 et al.

1836

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

November 12, 1941.

ORDER NO. 86

Order Prescribing Form of Annual Report for Natural-Gas Companies as Defined in the Natural Gas Act (52 Stat. 821), (Classes A and B), FPC Form No. 133 (1941)

The Federal Power Commission, acting pursuant to authority granted by the Natural Gas Act, particularly Sections 10(a) and 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act:

- (1) Hereby adopts, promulgates and prescribes for use of natural-gas companies as defined in the Natural



than a calendar year) an original and two conformed copies, duly executed, of such Annual Report on the aforesaid FPC Form No. 2, on or before the last day of the third month following the close of the calendar year or other established fiscal year;

(3) Order No. 100, dated November 24, 1942, and FPC Form No. 133 thereby prescribed, are accordingly superseded by this order;

This order and the form herein prescribed shall become effective on January 3, 1944; and the Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

LEON M. FUQUAY,
Secretary

**Exhibit No. 3, at Hearing on Docket No. G-115 et al.
(Excerpt)**

1969

THE EAST OHIO GAS COMPANY

Statistics as to the Company's Properties

*As of
December 31, 1945*

Miles of Storage Lines.....	672
Miles of Field Lines.....	1,011
Miles of Transmission Lines.....	903
Miles of Distribution Lines.....	5,490
Number of Compressing Stations.....	4
Horsepower of Compressing Stations.....	7,705
Gasoline and Purification Plants.....	1
Underground Storage Areas.....	2
Gas Wells Owned and Operated (Net).....	266
Ohio Gas Wells Owned by Others Whose Production is Purchased (Net).....	446
Storage Wells—Chippewa Area.....	19
Storage Wells—Stark-Summit Area.....	296

Operated Gas Acreage.....	32,451
Unoperated Gas Acreage.....	635,739
Number of Communities Served (All at Retail)....	69
Total Number of Consumers Served	
(At December 31, 1945):.....	551,175
Estimated Population.....	2,015,000

1970

THE EAST OHIO GAS COMPANY**Statistics as to Gas Handled by the Company***Natural Gas Produced and Purchased*

	Year 1945 (M. c. f.)
Produced in Ohio.....	2,794,537
Purchased in Ohio.....	8,847,468
Purchased from Hope Natural Gas Company..	48,506,683
Purchased from Panhandle Eastern.....	18,477,858
Total	78,626,546

Natural Gas Sold, Stored and Used in Own Operations

Sold to Domestic Consumers.....	46,674,457
Sold to Industrial Consumers.....	30,126,754
Field Sales.....	627,196
Total Sales.....	77,428,407
Gas Stored (Net).....	802,938
Gas Used for Own Operations.....	275,756
Unaccounted for Gas.....	119,445
Total	78,626,546



**Question from F. P. C. Order No. 51, and Answer Filed by
East Ohio Gas Co. Aug. 15, 1938 (Incorporated by ref-
erence at page 81 of the record).**

2470 7 Q. Furnish a map or maps, drawn to scale, showing by states as of July 1, 1938 the miles of pipe line operated, the location of all facilities now owned or operated for the production, gathering, transportation, sale, and distribution of natural gas and indicate pipe sizes and the normal operating pressures of pipe lines, compressor stations, capacities of equipment, and other essential and appurtenant equipment. Plainly designate points at which pipe lines owned or operated by the reporting person cross state lines and points where connections are made with gas pipe lines of other individuals or companies, indicating the pipe sizes at the state lines and of all connecting pipes at the points of connection. The map should designate all points on the system where natural gas is purchased and delivered:

A. See map attached. The Company purchases gas from 428 wells and produces gas from 381 of its own wells. These 809 wells and the field and gathering lines thereto are located in Knox, Holmes, Wayne, Summit, Stark, Tuscarawas, Medina and Cuyahoga Counties, Ohio, and it is impractical to designate on this map all of the Company's wells, field and gathering lines, and each of the locations where this Ohio gas is introduced into The East Ohio Gas Company's system. This information is available on the detailed maps located in the Company's offices.

The greater part of the gas purchased by The East Ohio Gas Company from the Hope Natural Gas Company is delivered at the two locations on the Ohio River indicated on the map and is pumped from the Hope Company's Hastings Station located approximately 25 miles south of the Ohio River. Occasionally some Hope gas is delivered to the East Ohio at the Ohio-Pennsylvania state line as explained in the answer to question 8. The pressures at Hastings station vary from approximately 200 pounds to somewhat over

300 pounds, the exact amount of the pressure being dependent upon the time of the year and the East Ohio's demand for gas. No further pumping of this gas is required before it is ultimately distributed in the various city plants in Ohio. The East Ohio Gas Company owns that portion of the river crossings north of the low water mark on the Ohio side of the Ohio River. The gas
2471 purchased and produced by the Company at the various wells in Ohio is transmitted to the distribution plants at pressures dependent upon the rock pressure of the wells, size of field lines, location of pumping stations, distance of the distribution plants from the wells, demands of the distribution plants for gas, and many other factors. The pressures in these field lines may under certain circumstances reach as high as 400 pounds. At the various communities in which the Company delivers and sells gas at retail, and indicated on the map, the pressure of the gas is reduced to a few ounces suitable for domestic use.

* * * * *

**Excerpts from Application of East Ohio Gas Company—
Docket No. G-458 (Incorporated by reference at page
81 of the record).**

2935 At the connection with the Panhandle Eastern line gas will be received by Applicant at pressure which are expected to be sufficient to deliver in excess of a maximum of 50 million cubic feet per day. The gas will be transmitted without any further compression to the consumers' burner tips. Some gas will be taken via the Medina line to the western side of Cleveland, as shown on Exhibit C, and the balance will be delivered into Brush Farm station for introduction into the Applicant's pipe line system. The maximum delivery of firm gas will be 50 million cubic feet per day in the winter, but in the summer months Applicant expects to take additional quantities of gas which, together with the firm gas, will make a maximum of 81 million cubic feet. The minimum will be not less than approximately 50 million cubic feet per day. A line pressure at Maumee of

approximately 285 # per square inch will be adequate to make the minimum delivery and a pressure of approximately 400 # per square inch the maximum delivery under the contract.

(F) The natural gas which Applicant proposes to purchase from Panhandle Eastern is produced or purchased by Panhandle Eastern in the Panhandle Field in Texas and in the Hugoton Field in Kansas. In Opinion No. 81 deciding the matters in Docket No. G-410 the Commission has found that Panhandle Eastern has gas reserves sufficient to meet its presently estimated demands for more than twenty-five years and that it has negotiations pending for additional reserves.

* * * * *

**Excerpts from Application of East Ohio Gas Company for an Additional Transmission Line—Docket No. G-695
(Incorporated by reference at page 84 of record).**

3264 Applicant purchases 50,000,000 cubic feet of gas per day from the Panhandle Eastern Pipe Line Company. It receives this gas at a point just south of Maumee, Ohio, and transports it through a 20-inch pipe line 112 miles long, to its Brush Farm valve station, 11½ miles north of Akron. A 10-inch branch line extends north from this 20-inch line at Valley City, Ohio, to the south edge of Cleveland near its westerly boundary. A portion of the gas received from the Panhandle Eastern Pipe Line Company is diverted into this line and is delivered into Cleveland directly. The balance of the gas continues to the Brush Farm valve station at which point it enters the main transmission system. In addition to gas from Hope, Applicant procures gas from the Ohio producing fields located principally in Holmes, Summit, Stark, Columbiana, Tuscarawas, Medina, and Cuyahoga Counties. A portion of this gas is produced by Applicant and the remainder is purchased from independent producers.

* * * * *

3270 (H) The operation of the proposed pipe line is to be carried on as a part of Applicant's general natural gas system, in the State of Ohio, and will be supervised by the department that now has charge of its transmission lines. No service or management contracts with respect thereto are contemplated.

• • • • • • • •

Excerpts from Exhibit I-2 to Application—Docket No. G-695 (Incorporated by reference at page 240 of the record)

3290 Statement No. 7 shows the quantities of gas which would be available into The East Ohio Gas Company's system through a 20-inch line with intake pressures varying from approximately 340 # to 480 #. (These pressures are at the Panhandle's 22-inch line connection, as indicated on the map on page 25.) It will be noted that when the pressure on the Panhandle's 22-inch line is 480 # it will be possible to transmit more than 81,000,000 cubic feet per day into The East Ohio Gas Company's system. In the event of a line break in either the Hope's or East Ohio's transmission system, such as occurred to the Hope Company last December, or trouble at one of the large valve stations such as Gross Farm, either of which occurrence would greatly curtail the normal deliveries to the East Ohio's customers this large supply from an independent source to a point close to the major markets provides an added protection to our normal supply.

• • • • • • • •



3312 Done the date above written.

THE EAST OHIO GAS COMPANY,

By (Signed) J. FRENCH ROBINSON,
President.

(Signed) P. F. LERCH, *Secretary.*

GAS COMPANIES INCORPORATED,

By (Signed) F. H. LERCH, JR.,
President.

(Signed) JAMES COMERFOED, *Ass't. Secretary.*

• • • • • • • •

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Commissioners: Claude L. Draper, Acting Chairman; Basil Manly, John W. Scott; Clyde L. Seavey, not participating.

February 14, 1939.

In the Matter of: The East Ohio Gas Company.

Docket No. G-115.

Order Instituting Investigation

It appearing to the Commission that:

- (a) The East Ohio Gas Company is engaged in the transportation of natural gas in interstate commerce and is, therefore, a natural-gas company within the meaning of the Natural Gas Act;
- (b) On October 26, 1938, the City of Cleveland filed with the Commission a petition praying that an investigation be instituted by the Commission, pursuant to Section 5(b) of the Natural Gas Act, to determine the cost of transportation of natural gas by The East Ohio Gas Company from the Ohio River to the city gate of Cleveland, and that the Commission pursuant to Section 6(b) of the Natural Gas Act, order The East Ohio Gas Company to file with the Com-

mission instanter an inventory of its property devoted in whole or in part to the transportation of interstate natural gas and a statement of the original cost of such property.

- (e) On November 17, 1938, the City of Cleveland filed with the Commission an amendment to its said petition, in which the City tenders to the Commission its fullest cooperation and any facilities which it may have available in aid of the requested investigation;
- (d) In a communication to the Commission, dated November 10, 1938, an attorney for The East Ohio Gas Company submitted the company's objections to the institution of the requested investigation; in a communication to the Commission, dated November 25, 1938, attorneys for the City of Cleveland responded to the said objections of the company; in a communication to the Commission, dated December 5, 1938, said attorney for the company responded to the said communication of November 25, 1938, submitted by attorneys for the City of Cleveland:

3326 Wherefore, upon consideration of the said petition of the City of Cleveland, as amended and the communications relating thereto received from attorneys for the City of Cleveland and The East Ohio Gas Company, the Commission finds that:

- (1) It is advisable, necessary, and proper, in the public interest, for the Commission to institute an investigation, on its own motion, into and concerning the cost of transportation of natural gas by The East Ohio Gas Company from the Ohio River to the city gate of Cleveland, Ohio, and to order the East Ohio Gas Company to file an inventory and a statement of the original cost of its property used or useful in the transportation of natural gas from the Ohio River to the city gate of Cleveland, Ohio;

THE EAST OHIO GAS COMPANY

PROPOSED PIPE LINE FROM MAUMEE TO BRUSH FARM, SHOWING PRESSURES AND QUANTITIES OF GAS UNDER VARIOUS PRESSURE CONDITIONS INCLUDING REMOVAL OF THAT PORTION OF PRESENT MEDINA LINE SOUTH OF NEW MEDINA CONNECTION AND RELAYING THIS PIPE TO INCREASE THE CAPACITY OF THE LINE FROM NEW MEDINA CONNECTION NORTH TO CLEVELAND

Pressures (Lb. per Sq. In.) At

Quantities of Gas (M. Cu. Ft. per Day) Delivered At
Cleveland and Brush Farm

Basis No.	Panhandle 20" Line	Proposed East Ohio Connection	Proposed 20" Inlet With Their West Side New 16" Maumee	Proposed Medina Connection	Proposed At Brush Farm	Cleveland	To Cleveland via Re- arranged Medina Line	To Brush Farm via New 20" Line	Total	All Gas to Brush Farm via New 20" Line	All Gas to Cleveland via Re- arranged Medina Line
	Line	River									
1	484	399	161	125	35	19,500	61,900	81,400	80,000	47,700	
2	471	389	158	125	35	19,300	59,900	79,200	77,700	46,400	
3	468	379	156	125	35	19,000	57,800	76,800	75,500	45,200	
4	445	368	154	125	35	18,700	55,700	74,400	73,300	44,000	
5	432	358	153	125	35	18,500	53,700	72,200	71,000	42,700	
6	419	347	151	125	35	18,200	51,600	69,800	68,600	41,400	
7	406	337	149	125	35	17,900	49,600	67,500	66,300	40,200	
8	393	326	148	125	35	17,700	47,500	65,200	64,000	38,900	
9	380	316	146	125	35	17,400	45,500	62,900	61,700	37,700	
10	367	306	144	125	35	17,100	43,500	60,600	59,400	36,400	
11	354	296	143	125	35	16,900	41,300	58,200	57,000	35,200	
12	342	286	141	125	35	16,700	39,400	56,100	54,900	34,000	

SIZE AND LENGTH OF TRANSMISSION LINES

3306

Line	From	To	Nominal Size	Length Miles
T.P.L. No. 1	McKee Farm	Richardson Sta.	12"	28.8
T.P.L. No. 2	Pipe Creek	Richardson Sta.	18"	118.5
T.P.L. No. 3	Clarington	Richardson Sta.	18"	126.9
T.P.L. No. 4	Clarington	Price Farm	20"	25.6
T.P.L. No. 4	Price Farm	Gross Farm	18"	57.8
T.P.L. No. 5	Clarington	Dunham Sta.	20"	122.8
Franklin-McKee Farm Branch	Franklin Sta.	McKee Farm	10"	7.2
Youngstown Branch	Gross Farm	Austintown Jet	14"	37.8
" "	Austintown Jet	Raccoon Sta.	12"	4.7
Youngstown Branch	Gross Farm	Raccoon Sta.	16"	42.7
Warren Branch No. 1	Austintown Jet	Warren Red Sta.	10"	7.5
" " No. 2	" "	" "	10"	7.6
Niles Branch	Warren 10	Niles Red Sta.	8"	2.6
Dover-New Philadelphia Branch	T.P.L. No. 2 & No. 3	Dover & New Phila.	6"	5.0
Imperial Branch	Penn State Line	Youngstown	8"	13.1
Ravenna Branch	Fairlawn Conn.	Ravenna	8"	18.5
Kent Branch	Ravenna Br	Kent Red Sta.	6"	0.7
Canton Branch	C & M Jet	Buckhill Sta.	10"	2.6
Massillon Branch	C & M Jet	Massillon Sta.	8"	2.1
Dunham-Willow By-Pass	Willow Sta.	Dunham Sta.	18"	3.4
E. Palestine Branch	Imperial Conn	E. Palestine	6"	4.5
McDonald Branch	Raccoon Sta.	McDonald	8"	5.1
Akron Branch	C & M Jet	South Akron	10"	17.4
Akron Branch	White Pond	Copley Sta.	8"	1.0
Mohican Main Line	Danville	End of 3"	2"	2.1
" " " "	End of 2"	End of 4"	3"	6.0
" " " "	End of 3"	End of 6"	4"	1.2
" " " "	End of 4"	End of 10"	6"	6.6
" " " "	End of 6"	End of 12"	10"	9.8
" " " "	End of 10"	Barberton	12"	36.6
Barberton Branch	Barberton	Copley Station	16"	5.8
Danville-Gann Branch	Mohican 12"	Barberton	10"	0.3
Chippewa Branch	Danville Reg	Gann	2"	3.7
Loudonville Branch	Mohican 12"	Chippewa Sta.	18"	1.0
Millersburg Branch	Mohican 10"	Loudonville	6"	0.8
Mohican-Shreve Sta. Line	Mohican 12"	Shreve Sta.	6"	3.6
Orrville Branch	Mohican 12"	Shreve Sta.	10"	3.9
Shreve Branch	Millersburg 6"	Orrville	6"	2.1
Wadsworth Branch	Mohican 12"	Shreve	4"	0.4
Wooster Branch	Mohican 12"	Wadsworth	6"	1.6
Medina Line	Medina County	Wooster	6"	0.1
		Cleveland	10"	26.3

**Excerpts from Exhibit No. 16 to Application—Docket No.
G-458: Service Contracts.**

3310 AGREEMENT made and entered into January 1, 1941 by and between The East Ohio Gas Company, an Ohio corporation, of Cleveland, Ohio (hereinafter called "East Ohio") and Gas Companies Incorporated, a New York corporation, of New York (hereinafter called "Gas Companies").

WHEREAS, Gas Companies was incorporated for the purpose of and is engaged in performing services of the nature hereinafter set forth and has been rendering such services to East Ohio under an oral understanding and arrangement; and

WHEREAS, East Ohio owns one-third of all the outstanding capital stock of Gas Companies and desires to have Gas Companies continue to perform the services of the nature heretofore rendered, the same to be performed under the terms and provisions of this agreement, and at the actual cost thereof to Gas Companies.

Now, THEREFORE, THIS AGREEMENT WITNESSETH:

In consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

First: Gas Companies will perform for East Ohio, as requested and required by East Ohio, consulting and advisory services relating to the management and administration of East Ohio's natural gas business.

Gas Companies will furnish the personnel for the rendition of such services and the officers and employees of Gas Companies will be available upon request of East Ohio to render such consultation and advice respecting all matters in connection with the production, purchase, transportation and distribution of natural gas by East Ohio.

• • • • • • • •

(2) Said investigation can be conducted by the Commission without prejudice to the efficient and proper conduct of its affairs;

The Commission, upon its own motion, *orders* that:

(A) An investigation be and the same is hereby instituted to determine the cost of transportation of natural gas by The East Ohio Gas Company from the Ohio River to the city gate of Cleveland, Ohio;

(B) The East Ohio Gas Company be and it is hereby directed to furnish to this Commission under oath, on or before April 17, 1939:

- (a) An inventory of its lines, facilities and other classes of property devoted in whole or in part to and actually used or useful in the transportation of natural gas from the Ohio River to the city gate of Cleveland, Ohio, as of December 31, 1938;
- (b) A statement by lines, facilities and other classes of property, of the cost to The East Ohio Gas Company of each item set forth in (a) above constructed by said Company as reflected on its books on December 31, 1938;
- (c) A statement by lines, facilities and other classes of property, of the cost to any other person first devoting such property to the public service, estimated if not known, of such items set forth in (a) above, acquired by The East Ohio Gas Company as operating units or systems or parts thereof;
- (d) A statement setting forth by years for the calendar years 1936, 1937, and 1938, and classified by accounts as kept by said Company, the operating expenses applicable to the transportation of natural gas through the lines and facilities set forth in (a) above;

3327 (e) A statement setting forth by years for the calendar years 1936, 1937, and 1938, the total quantities of natural gas transported through the lines and facilities set forth in (a) above, and segregated between natural gas purchased from Hope Natural Gas Company and natural gas received from other sources.

(f) A legible map showing the lines and facilities set forth in (a) above, and designating the receiving points of natural gas into said lines from each separate source.

By the Commission.

LEON M. FUQUAY,
Secretary.

3798

Filed Feb. 25, 1943

Before the

FEDERAL POWER COMMISSION

Docket No. G-115.

In the Matter of

THE EAST OHIO GAS COMPANY.

Petition of the City of Cleveland for Leave to Intervene.

Now comes the City of Cleveland, Ohio, and for its petition for leave to intervene herein, says:

First: Petitioner, the City of Cleveland, Ohio, is a municipal corporation duly organized and existing under the Constitution and laws of the State of Ohio, and is a municipality within the meaning of the Natural Gas Act. (Sec. 2(3).)

Second: The Council of the City of Cleveland is the regulatory body of the City of Cleveland having original jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the City of Cleveland, and is a

"state commission" within the meaning of the Natural Gas Act, which defines "state commission" as "the regulatory body of the state or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the state or municipality." (Sec. 2(8).)

Third: The East Ohio Gas Company is a corporation duly organized and existing under the laws of the State of Ohio, has its principal place of business in the City of Cleveland and State of Ohio, and is a natural gas company engaged in the transportation of natural gas in interstate commerce within the meaning of the Natural Gas Act.

(1) This Honorable Commission has hitherto determined that East Ohio is a person engaged in the transportation of natural gas in interstate commerce; that said East Ohio is a "natural gas company" within the meaning of the Natural Gas Act; and that said The East Ohio Gas Company is subject to the provisions of said Act and the

rules and regulations prescribed by the Commission
3799 thereunder. *In the Matter of The East Ohio Gas Company* (F. P. C. Docket G-115; Opinion No. 37; Order dated February 14, 1939 and April 14, 1939) 28 P. U. R. (N. S.) 129; petition for review dismissed, *East Ohio Gas Company v. Federal Power Commission*, 115 F. (2d) 385 (C. C. A. 6th).

(2) East Ohio is a wholly owned subsidiary of the Standard Oil Company (New Jersey), and is engaged in the business of purchasing, transporting and selling natural gas for ultimate consumption within the state of Ohio.

(3) East Ohio is engaged in the operation of natural gas transmission pipe lines including main trunk pipe lines commencing at the West Virginia-Ohio state line and extending to Cleveland, Ohio, and in the operation of certain lateral lines extending from the main trunk pipe lines to other cities and towns in northeastern Ohio.

(4) East Ohio purchases more than 75 per cent of the natural gas which it sells from Hope Natural Gas Company, likewise a wholly owned subsidiary of the Standard Oil

Company (New Jersey), at the West Virginia-Ohio state line; the natural gas so purchased is produced in the state of West Virginia by said Hope Natural Gas Company and its vendors, is gathered by said Hope Natural Gas Company and its vendors; and is transported by said Hope Natural Gas Company and its vendors from termini of gathering lines through hundreds of miles of transmission pipe lines in West Virginia to the point of sale to East Ohio at the West Virginia-Ohio state line.

(5) The flow of natural gas from the termini of gathering lines in West Virginia through the interconnected facilities of Hope Natural Gas Company and its vendors and through the interconnected facilities of The East Ohio Gas Company to points of local distribution in Ohio is continuous, and constitutes a regular unbroken transmission of such gas from such termini of gathering lines in West Virginia to points of ultimate public consumption in Ohio.

Fourth: The position of petitioner, in the event that leave to intervene is granted, is in support of a determination that The East Ohio Gas Company is a natural gas company within the meaning of the Natural Gas Act and in support of a determination of the cost of natural gas service rendered by said company, including the cost of transportation of natural gas by said company from the Ohio River to the city gate serving Cleveland, Euclid and Lakewood, Ohio.

3800 *Fifth:* The petitioner has a substantial interest in a determination that East Ohio is a natural gas company within the meaning of the Natural Gas Act and therefore subject to the jurisdiction of the Federal Power Commission. In the case of *East Ohio Gas Company v. Cleveland*, P. U. C. O. No. 10,202, The Public Utilities Commission of Ohio, employing the reproduction cost theory of rate-making, found the rate base of East Ohio's affiliate, Hope Natural Gas Company, to be approximately \$73,000,000 for 1938. In the case of *Cleveland v. Hope Natural Gas Company*, F. P. C. Docket No. G-100, the Federal Power Commission, employing the actual money prudent investment method

of rate-making, found the rate base of said Hope Natural Gas Company to be approximately \$32,000,000 for 1939. The City of Cleveland is therefore interested in the assertion of the existing jurisdiction of the Federal Power Commission over every natural gas company engaged in the service of Cleveland consumers to the end that the public interest may be fully protected.

Sixth: The petitioner has a substantial interest in a determination of the cost of natural gas service rendered by The East Ohio Gas Company, including the cost of transportation of natural gas by said company from the Ohio River to the city gate serving Cleveland, Euclid and Lakewood, Ohio. In the case of *East Ohio Gas Company v. Cleveland*, aforesaid, The Public Utilities Commission of Ohio, employing the reproduction cost theory of rate-making, found the cost of all natural gas delivered by East Ohio at the Cleveland city gate to be approximately 39 cents per M.c.f. The City expects the investigation by your Honorable Commission in the instant case to show that the actual cost of gas at the Cleveland city gate, upon the actual money prudent investment basis, is less than 30 cents per M.c.f. Your determination of the cost of natural gas service by The East Ohio Gas Company is an appropriate exercise of the nation's power to regulate interstate commerce by the method of publicity, and will furnish substantial aid to the City of Cleveland.

Seventh: The filing of this petition is authorized by Section 83 of the Charter of the City of Cleveland which provides:

"Sec. 83. The director of law shall be an attorney at law admitted to practice in the state of Ohio. He shall be the legal adviser of and attorney and counsel for the city, and for all officers and departments thereof in matters relating to their official duties. He shall prosecute or defend all suits for and in behalf of the city and shall prepare all contracts, bonds and other instruments in writing in which the city is concerned and shall endorse on each his approval of the

form and correctness thereof. No such bond, contract or instrument shall become effective without such endorsement by the director of law thereon.'

Eighth: Your petitioner, because of its interest in this proceeding aforesaid, deems it necessary and proper that it intervene herein.

WHEREFORE, your petitioner, the City of Cleveland, prays that it may be permitted to intervene herein and assert its position as the same may be necessary and proper and as its interests and those of its Council and people may appear.

THE CITY OF CLEVELAND,

By THOMAS A. BURKE, JR.,

Director of Law,

SPENCER W. REEDER,

Assistant Director of Law in

Charge of Utility Controversies,

Its Attorneys.

STATE OF OHIO,
CUYAHOGA COUNTY, ss.

FRANK J. LAUSCHE, being first duly sworn, says that he is Mayor of the City of Cleveland, Ohio, a municipal corporation, petitioner herein; that he has read the foregoing petition of the City of Cleveland to intervene and that the statements and allegations contained therein are true.

FRANK J. LAUSCHE.

Sworn to before me and subscribed in my presence this
13th day of February, 1943.

(Seal)

IRENE G. CASHMAN,
Notary Public.

(My Commission expires March 27, 1944)

* * * * *

3802

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper,
Basil Manly, John W. Scott and Clyde L. Seavey.

March 9, 1943

In the Matter of The East Ohio Gas Company

Docket No. G-115

Order Permitting Intervention

It appearing to the Commission that:

- (a) On February 25, 1943, the City of Cleveland, Ohio, filed a petition for leave to intervene in the above-entitled proceeding;
- (b) The participation of the City of Cleveland in said proceeding may be in the public interest;

The Commission *orders* that:

The City of Cleveland be and it is hereby permitted to become an intervenor in said proceeding; provided, however, that such permission shall not be construed as recognition by this Commission that said City of Cleveland might be aggrieved by any order of this Commission issued in said proceeding.

By the Commission.

LEON M. FRQUAY,
Secretary

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3805

Filed June 25, 1942

Before the
FEDERAL POWER COMMISSION

Docket No. G-399

CITY OF EUCLID,

A Municipal Corporation,
Complainant

vs.

THE EAST OHIO GAS COMPANY
A Corporation
*Defendant***Complaint.****To the Honorable Members of the Federal Power
Commission:****The City of Euclid brings this its complaint against The
East Ohio Gas Company and for its cause of action avers:****First: Complainant, the City of Euclid (hereinafter for
convenience termed "Euclid"), is a municipal corporation
duly organized and existing under the laws and constitution
of the state of Ohio, and is a municipality within the
meaning of the Natural Gas Act.****Second: Defendant, The East Ohio Gas Company (hereinafter for convenience designated as "East Ohio"), is a corporation duly organized and existing under the laws of the state of Ohio, has its principal place of business in the City of Cleveland in the state of Ohio, and is a natural gas company engaged in the transportation of natural
3806 gas in interstate commerce within the meaning of the Natural Gas Act.****(1) This Honorable Commission has hitherto determined that East Ohio is a person engaged in the transportation of natural gas in interstate commerce; that East Ohio is a "natural gas company" within the meaning of the Natural Gas Act; and that The East Ohio Gas Company is subject to the provisions of said Act and the rules and regulations**

prescribed by the Commission thereunder. In the matter of the East Ohio Gas Company (F. P. C. Docket G-115; Opinion No. 37; Order dated February 14, 1939 and April 14, 1939) 28 P. U. R. (N. S.) 129; petition for review dismissed, East Ohio Gas Company v. Federal Power Commission, 115 F. (2d) 385 (C. C. A. 6th).

(2) East Ohio is a wholly-owned subsidiary of the Standard Oil Company (New Jersey), and is engaged in the business of purchasing, transporting and selling natural gas for ultimate consumption within the state of Ohio.

(3) East Ohio is engaged in the operation of natural gas transmission pipelines including main trunk pipe lines commencing at the West Virginia-Ohio state line and extending to Cleveland, Ohio, and in the operation of certain lateral lines extending from the main trunk lines to other cities and towns in northeastern Ohio.

(4) East Ohio purchases more than .75 per cent of the natural gas which it sells from Hope Natural Gas Company, likewise a wholly owned subsidiary of the Standard Oil Company (New Jersey), at the West Virginia-Ohio state line; the natural gas so purchased is produced 3807 in the State of West Virginia by said Hope Natural Gas Company and its vendors, is gathered by said Hope Natural Gas Company and its vendors; and is transported by said Hope Natural Gas Company and its vendors from termini of gathering lines through hundreds of miles of transmission pipe lines in West Virginia to the point of sale to East Ohio at the West Virginia-Ohio state line.

(5) The flow of natural gas from the termini of gathering lines in West Virginia through the interconnected facilities of Hope Natural Gas Company and its vendors and through the interconnected facilities of The East Ohio Gas Company to points of local distribution in Ohio is continuous, and constitutes a regular unbroken transmission of such gas from such termini of gathering lines in West Virginia to points of ultimate public consumption in Ohio.

Third: This Honorable Commission has heretofore issued various mandatory orders addressed generally to all natural gas companies subject to the Commission's jurisdiction, including inter alia, the following:

(1) Order No. 69, adopted November 3, 1939, entitled An Order Prescribing a System of Accounts For Natural Gas Companies under the Natural Gas Act, effective January 1, 1940, providing that each natural gas company shall ascertain the original cost of its gas plant, and further providing that each natural gas company shall submit said original cost to this Honorable Commission not later than January 1, 1942.

(2) Order No. 73, adopted April 9, 1940, entitled 3808 an "Order Requiring Submission of Supplemental Data in Connection with Gas Plant Instruction 2-D of the Uniform System of Accounts Under the Natural Gas Act," said Gas Plant Instruction 2-D being the section of Order No. 69 aforesaid which requires the submission of the original cost of gas plant of each natural gas company to the Commission not later than January 1, 1942.

(3) Order No. 69-A adopted March 3, 1942, entitled an order "Prescribing Accounting with Respect to Account 100.5, Gas Plant Acquisition Adjustments," providing in connection with said original cost studies that debit amounts in Account 100.5, Gas Plant Acquisition Adjustments may be charged to Account 414, Miscellaneous Debits to Surplus, in whole or in part, or may be amortized over a reasonable period by charges to Account 537, Miscellaneous Amortization, without further order of the Commission.

Each of said orders is incorporated herein by reference to the files of the Commission.

Fourth: Said Order No. 69, together with a letter of transmittal dated November 30, 1939, was served upon East Ohio by registered mail as Registered Article No. 436,145, and was received and receipted for by said East Ohio on December 1, 1939.

Said Order No. 73 together with a letter of transmittal dated April 17, 1940, was served upon East Ohio by reg-

istered mail as Registered Article No. 436,127, and was received and receipted for by said East Ohio on April 19, 1940.

Said Order No. 69-A, together with a letter of transmittal dated March 18, 1942, was served upon East Ohio by registered mail as Registered Article No. 675,520, and was received and receipted for by said East Ohio on March 23, 1942.

Fifth: Defendant East Ohio has failed and refused to comply with said regulations and orders.

Sixth: The interest of the Complainant in the enforcement of orders of the Commission requiring East Ohio to ascertain and file its original cost is substantial. There are thousands of consumers of natural gas furnished by East Ohio within the corporate limits of the petitioner; East Ohio having a monopoly on the sale of such natural gas. The consumers include a large number of industrial plants, practically all of which are now engaged entirely in production in connection with the war effort. The petitioner now has a franchise with East Ohio which can be terminated on ninety days' notice. The Commission has recently ruled that "original cost studies are an essential aid to the prosecution of the war effort in that they provide a sound basis for the most effective control of the prices of utility services entering into practically every important essential war activity, as well as into the general cost of living." A knowledge of the original cost of the natural gas plant of East Ohio would be helpful to Euclid in contracting as to natural gas rates and in defending the reasonableness of legislatively fixed maximum natural gas rates against attack.

The Public Utilities Commission of Ohio on April 15, 1942, ordered the Classification of Accounts prescribed by 3810 the Federal Power Commission for companies subject to the provisions of the Natural Gas Act adopted for natural gas companies operating within the State of Ohio, effective as of January 1, 1942.

Seventh: The filing of this complaint has been authorized and directed by resolution of the Council of the City of Euclid adopted June 22, 1942.

WHEREFORE, Complainant City of Euclid prays that the Federal Power Commission order defendant The East Ohio Gas Company to show cause why it should not comply with said orders of the Commission requiring it to ascertain and submit its original cost, and further prays that after hearing, the Commission redetermine that defendant is a natural gas company within the meaning of the Natural Gas Act, and order defendant to comply with the orders of the Commission, requiring said natural gas company to ascertain and submit its original cost.

THE CITY OF EUCLID.

By PAUL H. TORBET,

Solicitor.

STAT OF OHIO,

CUYAHOGA COUNTY, SS.

KENNETH J. SIMS, being first duly sworn, says that he is Mayor of the City of Euclid, Ohio, a municipal corporation, complainant herein; that he has read the foregoing complaint and that the statements and allegations contained therein are true as he verily believes.

KENNETH J. SIMS.

Sworn to before me and subscribed in my presence this 14th day of June, 1942.

MICHAEL SPUND,
Notary Public.

(My Commission expires March 28 1943.)

• * • * • * • *

3812*

Filed June 25, 1942

Before the
FEDERAL POWER COMMISSION

Docket No. G-400.

CITY OF CLEVELAND,
A Municipal Corporation,
Complainant,

vs.

THE EAST OHIO GAS COMPANY,
A Corporation,
Defendant.

Complaint.

To the Honorable Members of the Federal Power Commission:

The City of Cleveland brings this its complaint against The East Ohio Gas Company and for its cause of action avers:

First: Complainant, the City of Cleveland (hereinafter for convenience termed "Cleveland"), is a municipal corporation duly organized and existing under the laws and constitution of the state of Ohio, and is a municipality within the meaning of the Natural Gas Act.

Second: Defendant, The East Ohio Gas Company (hereinafter for convenience designated as "East Ohio"), is a corporation duly organized and existing under the laws of the state of Ohio, has its principal place of business in the City of Cleveland in the state of Ohio; and is a natural gas company engaged in the transportation of natural gas in interstate commerce within the meaning of the Natural Gas Act.

(1) This Honorable Commission has hitherto determined that East Ohio is a person engaged in the transportation of natural gas in interstate commerce; that said East Ohio is a "natural gas company" within the meaning of the

Natural Gas Act; and that said The East Ohio Gas Company is subject to the provisions of said Act and the rules and regulations prescribed by the Commission thereunder.

'In the Matter of The East Ohio Gas Company (F. P. C. Docket G-115; Opinion No. 37; Order dated February 14,

1939 and April 14, 1939) 28 P. U. R. (N. S.) 129; petition for review dismissed, *East Ohio Gas Company v. Federal Power Commission*, 115 F. (2d) 385 (C. C. A. 6th).

(2) East Ohio is a wholly owned subsidiary of the Standard Oil Company (New Jersey), and is engaged in the business of purchasing, transporting and selling natural gas for ultimate consumption within the state of Ohio.

(3) East Ohio is engaged in the operation of natural gas transmission pipe lines including main trunk pipe lines commencing at the West Virginia-Ohio state line and extending to Cleveland, Ohio, and in the operation of certain lateral lines extending from the main trunk pipe lines to other cities and towns in northeastern Ohio.

(4) East Ohio purchases more than 75 per cent of the natural gas which it sells from Hope Natural Gas Company, likewise a wholly owned subsidiary of the Standard Oil Company (New Jersey), at the West Virginia-Ohio state line; the natural gas so purchased is produced in the state of West Virginia by said Hope Natural Gas Company and its vendors, is gathered by said Hope Natural Gas Company and its vendors; and is transported by said Hope Natural Gas Company and its vendors from termini of gathering lines through hundreds of miles of transmission pipe lines in West Virginia to the point of sale to East Ohio at the West Virginia-Ohio state line.

(5) The flow of natural gas from the termini of gathering lines in West Virginia through the interconnected facilities of Hope Natural Gas Company and its vendors and through the interconnected facilities of The East Ohio Gas Company to points of local distribution in Ohio is continuous, and constitutes a regular unbroken transmission of such gas

from such termini of gathering lines in West Virginia to points of ultimate public consumption in Ohio.

Third: This Honorable Commission has heretofore issued various mandatory orders addressed generally to all natural gas companies subject to the Commission's jurisdiction, including *inter alia*, the following:

(1) Order No. 69, adopted November 3, 1939 entitled An Order Prescribing a System of Accounts For Natural Gas Companies under the Natural Gas Act, effective January 1, 1940, providing that each natural gas company shall ascertain the original cost of its gas plant, and further providing that each natural gas company shall submit said original cost to this Honorable Commission not later than January 1, 1942.

3814 (2) Order No. 73, adopted April 9, 1940, entitled an "Order Requiring Submission of Supplemental Data in Connection with Gas Plant Instruction 2-D of the Uniform System of Accounts Under the Natural Gas Act," said Gas Plant Instruction 2-D being the section of Order No. 69 aforesaid which requires the submission of the original cost of gas plant of each natural gas company to the Commission not later than January 1, 1942.

(3) Order No. 69-A adopted March 3, 1942, entitled an order "Prescribing Accounting with Respect to Account 100.5, Gas Plant Acquisition Adjustments," providing in connection with said original cost studies that debt amounts in Account 100.5, Gas Plant Acquisition Adjustments may be charged to Account 414, Miscellaneous Debits to Surplus, in whole or in part, or may be amortized over a reasonable period by charges to Account 537, Miscellaneous Amortization, without further order of the Commission.

Each of said orders is incorporated herein by reference to the files of the Commission.

Fourth: Said Order No. 69, together with a letter of transmittal dated November 30, 1939, was served upon East Ohio by registered mail as Registered Article No. 436,145, and was received and receipted for by said East Ohio on December 1, 1939.

Said Order No. 73, together with a letter of transmittal dated April 17, 1940, was served upon East Ohio by registered mail as Registered Article No. 436,127, and was received and receipted for by said East Ohio on April 19, 1940.

Said Order No. 69-A, together with a letter of transmittal dated March 18, 1942, was served upon East Ohio by registered mail as Registered Article No. 675,520, and was received and receipted for by said East Ohio on March 23, 1942.

Fifth: Defendant East Ohio has failed and refused to comply with said regulations and orders.

Sixth: Cleveland has a substantial interest in the enforcement of the Commission's orders requiring East Ohio to ascertain and file its original cost, in that a knowledge of said original cost would be helpful to the City in contracting as to natural gas rates, in legislatively fixing maximum natural gas rates in the first instance, in defending the reasonableness and constitutionality of such legislatively fixed maximum natural gas rates against attack by injunction suits in the courts or on administrative review, and for other purposes.

3815 Moreover, as this Commission has recently ruled *In the Matter of Minnesota Power and Light Company*, Docket No. IT 5769, decided March 12, 1942, "Reclassification and original cost studies are an essential aid to prosecution of the war effort in that they provide a sound basis for the most effective control of the prices of utility services entering into practically every important essential war activity as well as into the general cost of living. The availability of such regulation as a means of warding off the dangers of inflation in this field apparently led the Congress specifically to exempt the control of public utility prices from the provisions of the Emergency Price Control Act of 1942."

Furthermore, at a regular session of The Public Utilities Commission of Ohio held at Columbus, Ohio, on the 15th day of April, 1942, the Classification of Accounts prescribed by

the Federal Power Commission for companies subject to the provisions of the Natural Gas Act was ordered adopted by The Public Utilities Commission of Ohio for natural gas companies operating within the State of Ohio, effective as of January 1, 1942.

Seventh: The filing of this complaint is authorized by Section 83 of the Charter of the City of Cleveland which provides:

"SEC. 83. The director of law shall be an attorney at law admitted to practice in the state of Ohio. He shall be the legal adviser of and attorney and counsel for the city, and for all officers and departments thereof in matters relating to their official duties. He shall prosecute or defend all suits for and in behalf of the city, and shall prepare all contracts, bonds and other instruments in writing in which the city is concerned and shall endorse on each his approval of the form and correctness thereof. No such bond, contract or instrument shall become effective without such endorsement by the director of law thereon."

WHEREFORE, Complainant City of Cleveland prays that the Federal Power Commission order defendant The East Ohio Gas Company to show cause why it should not comply with said orders of the Commission requiring it to ascertain and submit its original cost, and further prays that after hearing, the Commission redetermine that defendant is a natural gas company within the meaning of the Natural

Gas Act, and order defendant to comply with said previously formulated orders of the Commission, requiring said natural gas company to ascertain and submit its original cost.

THE CITY OF CLEVELAND,

By THOMAS A. BURKE, JR.,

Director of Law,

SPENCER W. REEDER,

Assistant Director of Law,

Its Attorneys.

STATE OF OHIO,
CUYAHOGA COUNTY, ss:

FRANK J. LAUSCHE, being first duly sworn, says that he is Mayor of the City of Cleveland, Ohio, a municipal corporation, complainant herein; that he has read the foregoing complaint and that the statements and allegations contained therein are true as he verily believes.

FRANK J. LAUSCHE.

Sworn to before me and subscribed in my presence this 24th day of June, 1942.

(Seal)

IRENE G. CASHMAN,
Notary Public.

(My Commission expires March 27, 1944.)

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3818

Filed June 29, 1942

Before the

FEDERAL POWER COMMISSION

Docket No. G-401.

CITY OF LAKewood

A Municipal Corporation,
Complainant,

vs.

THE EAST OHIO GAS COMPANY,

A Corporation,
Defendant.

Complaint.

To the Honorable Members of the Federal Power Commission:

The City of Lakewood brings this its complaint against The East Ohio Gas Company and for its cause of action avers:

First: Complainant, the City of Lakewood (hereinafter for convenience termed "Lakewood"), is a municipal corporation duly organized and existing under the laws and constitution of the state of Ohio, and is a municipality within the meaning of the Natural Gas Act.

Second: Defendant, The East Ohio Gas Company (hereinafter for convenience designated as "East Ohio"), is a corporation duly organized and existing under the laws of the state of Ohio, has its principal place of business in the City of Cleveland in the state of Ohio, and is a natural gas company engaged in the transportation of natural gas in interstate commerce within the meaning of the Natural

Gas Act.

3819 (1) This Honorable Commission has hitherto determined that East Ohio is a person engaged in the transportation of natural gas in interstate commerce; that said East Ohio is a "natural gas company" within the meaning of the Natural Gas Act; and that said The East Ohio Gas Company is subject to the provisions of said Act and the rules and regulations prescribed by the Commission thereunder. In the matter of The East Ohio Gas Company (F. P. C. Docket G-115; Opinion No. 37; Order dated February 14, 1939 and April 14, 1939) 28 P. U. R. (N. S.) 129; petition for review dismissed, *East Ohio Gas Company v. Federal Power Commission*, 115 F. (2d) 385 (C. C. A. 6th).

(2) East Ohio is a wholly owned subsidiary of the Standard Oil Company of New Jersey and is engaged in the business of purchasing, transporting and selling natural gas for ultimate consumption within the state of Ohio.

(3) East Ohio is engaged in the operation of natural gas transmission pipe lines including main trunk pipe lines commencing at the West Virginia-Ohio state line and extending to Cleveland, Ohio, and in the operation of certain lateral lines extending from the main trunk pipe lines to other cities and towns in northeastern Ohio.

(4) East Ohio purchases more than 75 per cent of the natural gas which it sells from Hope Natural Gas Company, likewise a wholly owned subsidiary of the Standard Oil Company of New Jersey at the West Virginia-Ohio State line; the natural gas so purchased is produced in the state of West Virginia by said Hope Natural Gas Company and its vendors, is gathered by said Hope Natural Gas Company and its vendors; and is transported by said Hope Natural Gas Company and its vendors from termini of gathering lines through many miles of transmission pipe lines in West Virginia to the point of sale to East Ohio at the 3820 West Virginia-Ohio state line.

(5) The flow of natural gas from the termini of gathering lines in West Virginia through the interconnected facilities of Hope Natural Gas Company and its vendors and through the interconnected facilities of The East Ohio Gas Company to points of local distribution in Ohio is continuous, and constitutes a regular unbroken transmission of such gas from such termini of gathering lines in West Virginia to points of ultimate public consumption in Ohio.

Third: This Honorable Commission has heretofore issued various mandatory orders addressed generally to all natural gas companies subject to the Commission's jurisdiction, including *inter alia*, the following:

(1) Order No. 69, adopted November 3, 1939 entitled An Order Prescribing a System of Accounts for Natural Gas Companies under the Natural Gas Act, effective January 1, 1940, providing that each natural gas company shall ascertain the original cost of its gas plant, and further providing that each natural gas company shall submit said original cost to this Honorable Commission not later than January 1, 1942.

(2) Order No. 73, adopted April 9, 1940, entitled an "Order Requiring Submission of Supplemental Data in Connection with Gas Plant Instruction 2-D of the Uniform System of Accounts Under the Natural Gas Act," said Gas Plant Instruction 2-D being the section of Order No. 69

aforesaid which requires the submission of the original cost of gas plant of each natural gas company to the Commission not later than January 1, 1942.

(3) Order No. 69-A adopted March 3, 1942, entitled an order "Prescribing Accounting with Respect to Account 100.5, Gas Plant Acquisition Adjustments," providing in connection with said original cost studies that debit 3821 amounts in Account 100.5, Gas Plant Acquisition Adjustments may be charged to Account 414, Miscellaneous Debits to Surplus, in whole or in part, or may be amortized over a reasonable period by charges to Account 537, Miscellaneous Amortization, without further order of the Commission.

Each of said orders is incorporated herein by reference to the files of the Commission.

Fourth: Said Order No. 9, together with a letter of transmittal dated November 30, 1939, was served upon East Ohio by registered mail as Registered Article No. 436,145, and was received and receipted for by said East Ohio on December 1, 1939.

Said Order No. 73, together with a letter of transmittal dated April 17, 1940, was served upon East Ohio by registered mail as Registered Article No. 436,127, and was received and receipted for by said East Ohio on April 19, 1940.

Said Order No. 69-A, together with a letter of transmittal dated March 18, 1942, was served upon East Ohio by registered mail as Registered Article No. 675,520, and was received and receipted for by said East Ohio on March 23, 1942.

Fifth: Defendant East Ohio has failed and refused to comply with said regulations and orders.

Sixth: The interest of the Complainant in the enforcement of orders of the Commission requiring East Ohio to ascertain and file its original cost is substantial. There are thousands of consumers of natural gas furnished by East Ohio within the corporate limits of the petitioner, East Ohio having a monopoly on the sale of such natural

gas. The consumers include industrial plants now engaged in production in connection with the war effort. The 3822 petitioner now has a franchise with East Ohio. The Commission has recently ruled that "original cost studies are an essential aid to the prosecution of the war effort in that they provide a sound basis for the most effective control of the prices of utility services entering into practically every important essential war activity, as well as into the general cost of living." A knowledge of the original cost of the natural gas plant of East Ohio would be helpful to Lakewood with respect to its contract with East Ohio as to the natural gas rates. The current contract of petitioner with East Ohio contains a provision, under the conditions provided therein, for an adjustment of the Lakewood rates "to the same rate schedule as is finally fixed for domestic and commercial consumers in the City of Cleveland.

The Public Utilities Commission of Ohio on April 15, 1942, ordered the Classification of Accounts prescribed by the Federal Power Commission for companies subject to the provisions of the Natural Gas Act adopted for natural gas companies operating within the State of Ohio, effective as of January 1, 1942.

Seventh: The Charter of the City of Lakewood provides that the Mayor shall be Ex-Officio Director of Public Works and further provides that as Director of Public Works "He shall manage and control * * * all public works of the City supported in part or in whole by taxation and shall enforce all the obligations of privately owned or operated public utilities enforceable by the City."

Eighth: The filing of this petition has been authorized by the Mayor-Ex-Officio Director of Public Works of the City of Lakewood, Ohio.

WHEREFORE, Complainant City of Lakewood prays that the Federal Power Commission order defendant The East Ohio Gas Company to show cause why it should not comply with said orders of the Commission requiring it to ascertain

and submit its original cost and further prays that
3823 after hearing, the Commission redetermine that defendant is a natural gas company within the meaning of the Natural Gas Act, and order defendant to comply with the orders of the Commission, requiring said natural gas company to ascertain and submit its original cost.

THE CITY OF LAKEWOOD.
By CHARLES F. ROSS,
Director of Law.

STATE OF OHIO,
CUYAHOGA COUNTY, ss:

AMOS I. KAUFFMAN, being first duly sworn, says that he is the Mayor and Ex-Officio Director of Public Works of the City of Lakewood, Ohio, a municipal corporation, petitioner herein; that he has read the foregoing petition and that the statements and allegations contained therein are true as he verily believes.

AMOS I. KAUFFMAN.

Sworn to before me and subscribed in my presence this — day of June, 1942.

COLETTA E. BLACK,
Notary Public.

(My Commission expires Feb. 15, 1945.)

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3825

Filed July 23, 1942

Before the

FEDERAL POWER COMMISSION

Docket No. G-399.

CITY OF EUCLID

A Municipal Corporation,
Complainant,

vs.

THE EAST OHIO GAS COMPANY,

A Corporation,
*Defendant.***Motion of the East Ohio Gas Company to Dismiss the
Complaint.***To The Honorable Members of the Federal Power Commission:*

The East Ohio Gas Company, denying now as heretofore that it is a "natural-gas company" subject to the jurisdiction of this Commission within the meaning of the Natural Gas Act, moves that the complaint of the City of Euclid herein be dismissed upon each of the following grounds:

1. The complaint asks this Commission to enforce its previously formulated orders claimed to be applicable to The East Ohio Gas Company by means of a new order, whereas the Natural Gas Act confers no authority upon the Commission to enforce its directions save by application to a Federal Court.

2. The Natural Gas Act does not authorize a municipality to complain of either alleged violations of or failures to comply with orders of this Commission pursuant to the Natural Gas Act, but only authorizes a municipality to complain "of anything done or omitted to be done by any natural-gas company in contravention of the provisions of"

the Natural Gas Act. The complaint alleges no violation of the Natural Gas Act itself.

THE EAST OHIO GAS COMPANY,

By **WILLIAM B. COCKLEY,**
WALTER J. MILDE,
THEODORE R. COLBORN,
 1759 Union Commerce Building,
 Cleveland, Ohio,
Its Attorneys.

3828

Filed July 23, 1942

Before the

FEDERAL POWER COMMISSION

Docket No. G-400.

CITY OF CLEVELAND,
 A Municipal Corporation,
Complainant,

vs.

THE EAST OHIO GAS COMPANY,
 A Corporation,
Defendant.

Motion of the East Ohio Gas Company to Dismiss the Complaint.

To the Honorable Members of the Federal Power Commission:

The East Ohio Gas Company, denying now as heretofore that it is a "natural-gas company" subject to the jurisdiction of this Commission within the meaning of the Natural Gas Act, moves that the complaint of the City of Cleveland herein be dismissed upon each of the following grounds:

1. The complaint asks this Commission to enforce its previously formulated orders claimed to be applicable to

The East Ohio Gas Company by means of a new order, whereas the Natural Gas Act confers no authority upon the Commission to enforce its directions save by application to a Federal Court.

2. The Natural Gas Act does not authorize a municipality to complain of either alleged violations of or failures to comply with orders of this Commission pursuant to the Natural Gas Act, but only authorizes a municipality to complain "of anything done or omitted to be done by any natural-gas company in contravention of the provisions of" the Natural Gas Act. The complaint alleges no violation of the Natural Gas Act itself.

THE EAST OHIO GAS COMPANY,

By WILLIAM B. COCKLEY,

WALTER J. MILDE,

THEODORE R. COLBORN,

1759 Union Commerce Building,

Cleveland, Ohio,

Its Attorneys.

3836

Filed July 23, 1942

Before the

FEDERAL POWER COMMISSION

Docket No. G-401.

CITY OF LAKEWOOD,
A Municipal Corporation,
Complainant,

vs.

THE EAST OHIO GAS COMPANY,
A Corporation,
Defendant.

**Motion of the East Ohio Gas Company to Dismiss the
Complaint.**

To the Honorable Members of the Federal Power Commission:

The East Ohio Gas Company, denying now as heretofore that it is a "natural-gas company" subject to the jurisdiction of this Commission within the meaning of the Natural Gas Act moves that the complaint of the City of Lakewood herein be dismissed upon each of the following grounds:

1. The complaint asks this Commission to enforce its previously formulated orders claimed to be applicable to The East Ohio Gas Company by means of a new order, whereas the Natural Gas Act confers no authority upon the Commission to enforce its directions save by application to a Federal Court.

2. The Natural Gas Act does not authorize a municipality to complain of either alleged violations of or failures to comply with orders of this Commission pursuant to the Natural Gas Act, but only authorizes a municipality to complain "of anything done or omitted to be done by any natural-gas company in contravention of the provisions of"

the Natural Gas Act. The complaint alleges no violation of the Natural Gas Act itself.

THE EAST OHIO GAS COMPANY,
By WILLIAM B. COCKLEY,
WALTER J. MILDE,
THEODORE R. COLBORN,
1759 Union Commerce Building,
Cleveland, Ohio,
Its Attorneys.

3838

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners Leland Olds, Chairman; Claude L. Draper, Richard Sachse and Harrington Wimberly.

February 16, 1946.

In the Matters of

Docket No. G-115.

THE EAST OHIO GAS COMPANY

Docket No. G-399.

CITY OF EUCLID, *Complainant*

v.

THE EAST OHIO GAS COMPANY, *Defendant*

Docket No. G-400.

CITY OF CLEVELAND, *Complainant*,

v.

THE EAST OHIO GAS COMPANY, *Defendant*

Docket No. G-401.

CITY OF LAKewood, *Complainant*,

v.

THE EAST OHIO GAS COMPANY, *Defendant*

Order Denying Motions to Dismiss, Consolidating Proceedings, Fixing Date of Hearing, and Requiring the East Ohio Gas Company to Show Cause

It appears to the Commission that:

(a) On October 26, 1938, *In the Matter of The East Ohio Gas Company*, Docket No. G-115, the City of Cleveland, Ohio, filed with the Commission a petition praying for an investigation and a determination by the Commission of the cost of transportation in interstate commerce of natural gas by The East Ohio Gas Company ("East Ohio") from the Ohio River to the city gate of Cleveland, and an order requiring East Ohio to file with the Commission an inventory of its property devoted in whole or in part to the transportation of interstate gas and a statement of the original cost of such property.

(b) By an order in said matter dated February 14, 1939, the Commission, pursuant to Sections 5(b) and 6(b) of the Natural Gas Act, instituted an investigation to determine the cost of transportation of natural gas by East Ohio from the Ohio River to the city gate of 3839 Cleveland, and directing East Ohio to furnish to the Commission under oath, on or before April 17, 1939, the following information and data:

- (i) An inventory of its lines, facilities and other classes of property, devoted in whole or in part to and actually used or useful in the transportation of natural gas from the Ohio River to the city gate of Cleveland, Ohio, as of December 31, 1938;
- (ii) A statement by lines, facilities and other classes of property, of the cost to East Ohio of each item set forth in (i) above, constructed by said Company as reflected on its books on December 31, 1938;
- (iii) A statement by lines, facilities and other classes of property, of the cost to any other person first devoting such property to the public service, estimated if not known, of such items set forth

in (i) above, as were acquired by East Ohio as operating units or systems or parts thereof;

(iv) A statement setting forth by years for the calendar years 1936, 1937 and 1938, and classified by accounts as kept by said Company, the operating expenses applicable to the transportation of natural gas through the lines and facilities set forth in (i) above;

(v) A statement setting forth by years for the calendar years 1936, 1937 and 1938, the total quantities of natural gas transported through the lines and facilities set forth in (i) above, and segregated between natural gas purchased from Hope Natural Gas Company and natural gas received from other sources;

(vi) A legible map showing the lines and facilities set forth in (i) above, and designating the receiving points of natural gas into said lines from each separate source.

(c) On March 16, 1939, East Ohio petitioned for a rehearing and stay of said order of February 14, 1939. On April 14, 1939, the Commission denied the application for rehearing and stay, and amended the order of February 14, 1939, by directing East Ohio to furnish the following information in lieu of the requested information referred to in subdivision (ii) of paragraph (b) above:

3840 A statement by lines, facilities and other classes of property, as of December 31, 1938, of the cost estimated if not known, to East Ohio of each item set forth in (i) above, constructed by said Company; if the statement of cost differs from cost recorded in the books of account, a reconciliation of the amounts should be supplied; and granted East Ohio an extension of time until

July 17, 1939, to furnish the information and data required by said order of February 14, 1939.

- (d) On June 13, 1939, East Ohio filed with the United States Circuit Court of Appeals for the Sixth Circuit, a petition for review of said order of February 14, 1939; on November 8, 1940, the Court of Appeals, acting upon motion of the Commission, dismissed the petition for want of jurisdiction (*East Ohio Gas Co. v. Federal Power Commission*, 115 F. 2d 385).
- (e) On November 3, 1939, by Order No. 69, the Commission pursuant to authority granted by the Natural Gas Act, prescribed a Uniform System of Accounts for Natural-Gas Companies Subject to the Provisions of the Natural Gas Act; to become effective on January 1, 1940; by Order No. 73, adopted April 9, 1940, the Commission directed natural-gas companies subject to its jurisdiction to submit certain data, statements and information, pursuant to Gas Plant Instruction 2-D of said system of accounts, on or before January 1, 1942; by Order No. 69-A, adopted March 3, 1942, the Commission prescribed certain accounting requirements respecting Account 100.5, Gas Plant Acquisition Adjustments, in said system of accounts.
- (f) By Order No. 63, adopted September 6, 1939, Order No. 80, adopted January 14, 1941, Order No. 86, adopted November 12, 1941, Order No. 100, adopted November 24, 1942, and Order No. 113, adopted December 21, 1943, the Commission prescribed forms of annual financial and statistical reports for "natural-gas companies" as defined in the Natural Gas Act, designated respectively as FPC Form No. 133 (1939), FPC Form No. 133 (1940), FPC Form No. 133 (1941), FPC Form No. 133 (1942), and FPC Form No. 2 (1943 and each succeeding year); and directed that the same be filed with the Commission.

(g) By Order No. 81, adopted January 21, 1941, and Order No. 107, adopted November 23, 1943, the Commission, pursuant to authority vested in it by the Natural Gas Act, prescribed amendments to its "Provisional Rules of Practice and Regulations under the Natural Gas Act," requiring "natural-gas companies" within the meaning of said Act to furnish the Commission copies of certain contracts for the direct sale of natural gas to industrial consumers; and by Order No. 96, adopted June 23, 1942, required "natural-gas companies" to furnish the Commission copies of certain contracts involving the sale of natural gas to any agency of the United States, or to any party whose purchase or receipt of natural gas required the approval of any agency of the United States.

3841 (h) All of the orders referred to in paragraphs (e), (f) and (g) hereof were duly served upon East Ohio; and the time for compliance with each and all of said orders and requirements has expired.

(i) On June 25, 1942, the Cities of Cleveland and Euclid, Ohio, and on June 29, 1942, the City of Lakewood, Ohio, filed with this Commission complaints against East Ohio in the proceedings designated as *City of Cleveland, Complainant, v. The East Ohio Gas Company, Defendant, Docket No. G-400*, *City of Euclid, Complainant, v. The East Ohio Gas Company, Defendant, Docket No. G-399*; and *City of Lakewood, Complainant, v. The East Ohio Gas Company, Defendant, Docket No. G-401*. Each of said complainants alleges, *inter alia*, that East Ohio has failed and refused to comply with the aforementioned Orders Nos. 69, 73 and 69-A; that the complainant has a substantial interest in the enforcement of the Commission's orders requiring East Ohio to ascertain and file its original cost, and prays, *inter alia*,

that East Ohio be required to comply with such orders.

(j) On July 23, 1942, East Ohio filed motions to dismiss each of the aforementioned complaints together with supporting briefs; thereafter the Cities of Cleveland, Lakewood and Euclid duly filed briefs in opposition to such motions.

(k) On February 3, 1943, *In the Matter of The East Ohio Gas Company*, Docket No. G-115, the Commission issued a supplemental order for the purpose of determining whether East Ohio was a "natural-gas company" within the meaning of the Natural Gas Act; and to determine the cost of natural gas service rendered by said Company including the cost of transportation of natural gas by it from the Ohio River to the city gate serving Cleveland, Euclid and Lakewood, and setting the proceeding for hearing on March 3, 1943. On February 20, 1943, the Commission issued an order postponing such hearing to April 7, 1943. Thereafter, on February 25, 1943, the City of Cleveland filed a petition for leave to intervene in said proceeding, which petition was granted by order of March 9, 1943. On March 23, 1943, an order was issued postponing the hearing in said matter until further order of the Commission.

842 (l) On November 30, 1943, *In the Matter of The East Ohio Gas Company*, Docket No. G-458, an opinion and order were entered by the Commission in which it determined that East Ohio was a "natural-gas company" within the meaning of the Natural Gas Act. No appeal from this order was prosecuted by East Ohio, as provided for in Section 19(b) of the Natural Gas Act. On January 18, 1944, *In the Matter of The East Ohio Gas Company*, Docket No. G-266, the Commission issued an order in which it again determined that East Ohio was a "natural-gas company," and East Ohio sought no court re-

view of such order, as provided for by the Natural Gas Act.

(m) East Ohio has failed and refused to comply with each and all of the orders and requirements referred to in paragraphs (b), (c), (e), (f) and (g) hereof.

Upon consideration of the record in each of the above-entitled matters designated Docket Nos. G-115, G-399, G-400 and G-401, and the motions to dismiss and briefs on file referred to in paragraph (j) hereof, the Commission finds that:

Good cause exists for denying said motions to dismiss; for consolidating the aforementioned proceedings for hearing; for requiring East Ohio to show cause as hereinafter specified; and for holding a public hearing upon the matters and issues involved herein.

The Commission orders that:

(A) The motions of East Ohio to dismiss the respective complaints on file in the proceedings designated Docket Nos. G-399, G-400 and G-401, be and the same are hereby denied.

(B) The proceedings in Docket Nos. G-115, G-399, G-400 and G-401 be and the same are hereby consolidated for the purpose of hearing.

(C) A public hearing be held commencing on March 18, 1946, at 10:00 a. m., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

(i) Respecting the matters involved and the issues presented in these proceedings;

(ii) That at such hearing, East Ohio show cause, if any there be, why it is not a "natural-gas company" within the meaning of the Natural Gas Act; and why it has failed and refused to comply with the orders and requirements specified in paragraphs (b), (c), (e), (f) and (g).

3843

hereof; and why the Commission should not institute appropriate proceedings against it, its officers and directors for failure or refusal to comply with such orders and requirements.

- (D) Nothing contained in this order shall be construed as a waiver or stay of the requirements of any orders or requests of the Commission applicable to or affecting East Ohio.
- (E) Interested State commissions may participate in this hearing as provided in Section 67.4 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

LEON M. FUQUAY,
Secretary.

3844

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Leland Olds, Chairman; Claude L. Draper, Richard Sachse, Nelson Lee Smith and Harrington Wimberly.

March 6, 1946.

In the Matters of
Docket No. G-115.

THE EAST OHIO GAS COMPANY

Docket No. G-399.

CITY OF EUCLID, *Complainant*

v.

THE EAST OHIO GAS COMPANY, *Defendant*

Docket No. G-400.

CITY OF CLEVELAND, *Complainant*

v.

THE EAST OHIO GAS COMPANY, *Defendant*

Docket No. G-401.

CITY OF LAKWOOD, Complainant,

v.

THE EAST OHIO GAS COMPANY, Defendant

Docket No. G-695

THE EAST OHIO GAS COMPANY

Docket No. G-696

HOPE NATURAL GAS COMPANY -

Order Consolidating Proceedings

Upon consideration of the applications, complaints, and other documents of record in the above-entitled matters; and

It appearing to the Commission that:

- (a) The above-entitled matters are each set for hearing on March 18, 1946, at 10:00 a.m., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N.W., Washington, D. C.
- (b) Good cause exists for consolidating said matters for hearing;
- (c) The hearing should be expedited and the convenience of witnesses and counsel for the respective parties served by a designation of the order in which evidence is to be received;

3845 The Commission *orders* that:

- (A) The proceedings in Docket Nos. G-115, G-399, G-400, G-401, G-695 and G-696, be and the same are hereby consolidated for the purpose of hearing.
- (B) The hearing will proceed on March 18, 1946, firstly, upon the matters designated Docket Nos. G-115, G-399, G-400 and G-401; secondly, upon the matter of designated Docket No. G-696; and thirdly, upon the matter designated Docket No. G-695.

(C) This order is not to be construed as limiting any of the evidence adduced at such consolidated hearing to any one of the above-docketed proceedings.

By the Commission.

LEON M. FUQUAY,
Secretary.

3851

Filed March 18, 1946

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of

Docket No. G-115

THE EAST OHIO GAS COMPANY,

CITY OF EUCLID, *Complainant,*

v.

THE EAST OHIO GAS COMPANY, *Defendant,*

Docket No. G-399

CITY OF CLEVELAND, *Complainant,*

v.

THE EAST OHIO GAS COMPANY, *Defendant,*

Docket No. G-400

CITY OF LAKWOOD, *Complainant,*

v.

THE EAST OHIO GAS COMPANY, *Defendant,*

Docket No. G-401

Application for Leave to Intervene

Now comes the Public Utilities Commission of the State of Ohio, which is a State Commission within the meaning of the Natural Gas Act, and pursuant to the laws and reg-

ulations in such cases made and provided, as set out in the Federal Power Commissions's order No. 124, Section 39.5, requests leave to intervene in the above-styled proceedings.

The interest of such Commission lies in the fact that for a period of thirty-five years it has exercised full regulatory jurisdiction over the property and facilities of the East Ohio Gas Company used and useful in the production, gathering, transmission, and distribution of gas within the State of Ohio, and that the jurisdiction of the State of Ohio and the Public Utilities Commission extends to and covers all matters as herein-before set out in the above-styled citations, and such matters are a direct interest to the Public Utilities Commission of Ohio and to the State of Ohio and such interest will be directly affected by these proceedings.

HUGH S. JENKINS,
*Attorney General for the State
of Ohio.*

HARRY G. FITZGERALD, JR.,
*Assistant Attorney General,
State Office Building,
Columbus, 15, Ohio,
Counsel for The Public Utilities
Commission of Ohio.*

March 19, 1946

3853

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Leland Olds, Chairman; Claude L. Draper, Richard Sachse, Nelson Lee Smith, and Harrington Wimberly.

Order Permitting Intervention

Upon consideration of the petition filed March 18, 1946, by The Public Utilities Commission of Ohio seeking leave to intervene in the above-entitled proceedings; and

It appearing to the Commission that:

The participation of the above-named petitioner in the above-entitled proceedings may be in the public interest;

The Commission *orders* that:

The above-named petitioner be and it is hereby permitted to become an intervenor in these proceedings.

By the Commission.

LEON M. FUQUAY,
Secretary.

3854

June 25, 1946

Order Requiring Compliance With Orders Heretofore Issued.

It appears to the Commission that:

(a) On February 16, 1946, the Commission issued an order in these proceedings which, *inter alia*, consolidated the same for hearing upon the matters involved and the issues presented; and required The East Ohio Gas Company ("East Ohio") to show cause, if any there be, why it is not a "natural-gas company" within the meaning of the Natural Gas Act, and why it has failed and refused to comply with the orders and requirements of the Commission hereinafter specified.

(b) The consolidated proceedings came on for hearing on March 19, 1946, together with certain other proceedings pending before the Commission and consolidated with the

above-entitled proceedings for the purpose of the
3855 hearing. Complainant City of Cleveland and The

Public Utilities Commission of Ohio, intervener, participated in said hearing. Evidence, both oral and documentary, was introduced and briefs were thereafter filed by counsel for East Ohio, for the intervener Commission, for the State of Ohio and for this Commission.

(c) On February 14, 1939, pursuant to authority conferred by the Natural Gas Act, the Commission issued an order In the Matter of The East Ohio Gas Company, Docket No. G-115, which, as supplemented by an order in said matter dated April 14, 1939, inter alia directed East Ohio to furnish to the Commission under oath, on or before July 17, 1939, the following information and data:

(i) An inventory of its lines, facilities and other classes of property, devoted in whole or in part to and actually used or useful in the transportation of natural gas from the Ohio River to the city gate of Cleveland, Ohio, as of December 31, 1938;

(ii) A statement by lines, facilities and other classes of property, as of December 31, 1938, of the cost, estimated if not known, to East Ohio of each item set forth in (i) above, constructed by said Company; if the statement of cost differs from cost recorded in the books of account, a reconciliation of the amounts should be supplied;

(iii) A statement by lines, facilities and other classes of property, of the cost to any other person first devoting such property to the public service, estimated if not known, of such items set forth in (i) above, as were acquired by East Ohio as operating units or systems or parts thereof;

(iv) A statement setting forth by years for the calendar years 1936, 1937 and 1938, and classified by accounts as kept by said Company, the operating expenses applicable to the transportation of natural gas through the lines and facilities set forth in (i) above;

(v) A statement setting forth by years for the calendar years 1936, 1937 and 1938, the total quantities of natural gas transported through the lines and facilities set forth in (i) above, and segregated between natural gas purchased from Hope Natural Gas Company and natural gas received from other sources;

3856 (vi) A legible map showing the lines and facilities set forth in (i) above, and designating the receiving points of natural gas into said lines from each separate source.

(d) On November 3, 1939, by Order No. 69, the Commission, pursuant to authority granted by the Natural Gas Act, prescribed a Uniform System of Accounts for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, to become effective on January 1, 1940; by Order No. 73, adopted April 9, 1940, the Commission directed natural-gas companies subject to its jurisdiction to submit certain data, statements and information, pursuant to Gas Plant Instruction 2-D of said system of accounts, on or before January 1, 1942; by Order No. 69-A, adopted March 3, 1942, the Commission prescribed certain accounting requirements respecting Account 100.5, Gas Plant Acquisition Adjustments, in said system of accounts.

(e) By order No. 63, adopted September 6, 1939, Order No. 80, adopted January 14, 1941, Order No. 86, adopted November 12, 1941, Order No. 100, adopted November 24, 1942, and Order No. 113, adopted December 21, 1943, the Commission prescribed forms of annual financial and statistical reports for "natural-gas companies" as defined in the Natural Gas Act, designated respectively as FPC Form No. 133 (1939), FPC Form No. 133 (1940), FPC Form No. 133 (1941), FPC Form No. 133 (1942), and FPC Form No. 2 (1943 and each succeeding year); and directed that the same be filed with the Commission.

Upon consideration of the record in these proceedings, the evidence introduced and the briefs on file, the Commission finds that:

(1) East Ohio is, and at the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio; and is, and at all times since a date prior to the adoption of the Natural Gas Act on June 21, 1938, was, engaged in the business of producing, purchasing, transporting and distributing natural gas in said State, by means of an extensive pipeline system. The company sells natural gas at retail for public consumption in 69 communities in eastern Ohio, including Cleveland, Akron, Canton, Massillon and Youngstown.

(2) East Ohio owns and operates, and at all times since a date prior to June 21, 1938, owned and operated, the following facilities, among others:

3857 (i) A natural-gas 18-inch transmission pipeline, designated "T. P. L. No. 2," commencing at the Company's Pipe Creek valve station at the Ohio-West Virginia state-line on the Ohio River, in Belmont County, Ohio, and extending in a general northwesterly direction to Cleveland.

(ii) A natural-gas 18-inch transmission pipeline, designated "T. P. L. No. 3," commencing at the Company's Clarington valve station at the Ohio-West Virginia state line on the Ohio River, in Monroe County, Ohio and extending in a general northwesterly direction to Cleveland.

(iii) A natural-gas 20-inch transmission pipeline, designated "T. P. L. No. 5," commencing at the Company's Clarington valve station at the Ohio-West-Virginia state line on the Ohio River, in Monroe County, Ohio and extending in a general northwesterly direction to the vicinity of Cleveland.

(iv) A natural-gas transmission pipeline, designated "T. P. L. No. 4," a portion of the same being 20 inches in diameter and the remainder thereof, 18 inches, commencing at the Company's Clarington valve station at the Ohio-West Virginia state line on the Ohio River, in Monroe County, Ohio, and extending in a general northwesterly direction to Gross arm valve station, in Stark County, Ohio.

(v) A natural-gas 12-inch transmission pipeline, designated "T. P. L. No. 1," commencing at McKee Farm in Summit County, Ohio, and extending in a general northerly direction to Cleveland.

(vi) Two natural-gas transmission pipelines, each designated "Youngstown Branch line," one being 16 inches and the other, 14 inches, in diameter, commencing at Gross Farm valve station and extending in a general northeast-
erly direction to Austintown Junction, in Mahoning County, Ohio.

(3) T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5 and T. P. L. No. 4 connect, and at the times mentioned herein, connected, at the Ohio-West Virginia state line with transmission pipelines of Hope Natural Gas Company 3858 ("Hope"), an affiliate of East Ohio, which extend from Hope's Hastings compressor station, located in Wetzel County, West Virginia, approximately 25 miles south of the Ohio River; and T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5 and T. P. L. No. 4, are a direct continuation of such pipelines of Hope.

(4) East Ohio purchases, and at the times mentioned herein, purchased, from Hope, the major portion of the natural gas handled by it. Prior to the commencement in 1944 of its purchases from Panhandle Eastern Pipe Line Company ("Panhandle Eastern") referred to in paragraph (11) hereof, East Ohio procured from 70% to 85% of its supply of gas from Hope. Formerly, the natural gas which East Ohio received from Hope was produced in West Virginia; more recently, the natural gas so received by East Ohio has consisted, and now consists, of gas in part produced in West Virginia and in part purchased by Hope from the Tennessee Gas and Transmission Company, which transports the same from Texas. Most of the natural gas which East Ohio purchases from Hope is, and was, carried by Hope to the two aforementioned points on the Ohio-West Virginia state line, whence East Ohio carries, and did carry, the same in bulk to its various local distribution systems in Ohio, through T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5, T. P. L. No. 4, T. P. L. No. 1, the Youngstown Branch lines, and other transmission facilities.

(5) The aforementioned transmission facilities of East Ohio are also used to carry natural gas produced in Ohio to points of local distribution in East Ohio's system. The first Ohio-produced gas entering T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5 or T. P. L. No. 4, is introduced at a point approximately 40 miles from the state line.

(6) Pursuant to the obligation of contracts between Hope and East Ohio, Hope so operates, and at the times men-

tioned herein, did so operate, its Hastings compressor station and other transmission facilities in West Virginia as to cause the natural gas sold to East Ohio at the Ohio-West Virginia state line, to be there delivered at high pressures, for the purpose of propelling volumes of gas through East Ohio's transmission system to its local distribution areas. The greater portion of the natural gas so delivered by Hope is, and was, carried by East Ohio without additional compression, by means of T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5, T. P. L. No. 4, T. P. L. No. 1, and other transmission facilities, to most of East Ohio's local distribution areas, including those in and in the vicinity of

3859 Canton, Massillon, Akron and Cleveland. The remainder of the natural gas so delivered by Hope is, and was, carried by East Ohio, by means of T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5 and T. P. L. No. 4, together with the Youngstown Branch lines and other transmission facilities, to East Ohio's Youngstown-Warren-Niles area. The natural gas carried to the Youngstown-Warren-Niles area is propelled by the pressure at which it is received from Hope, plus additional pressure obtained by repumping the gas at Gross Farm. Hope's Hastings compressor station, its transmission pipelines from said station to the West Virginia-Ohio state line, and the transmission pipelines of East Ohio, are, and were, operated and controlled as a single unit or system respecting the pressures and volumes of the natural gas delivered by Hope as aforesaid.

(7) In the above-described operations, the natural gas flows, and did flow, continuously and uninterruptedly from the Wetzel compressor station in West Virginia to the points of distribution in Ohio, and such operations constitute, and did constitute, an established course of business.

(8) East Ohio also maintains, and at the times herein mentioned, did maintain, a connection of its facilities with transmission facilities of Peoples Natural Gas Company ("Peoples"), on the Ohio-Pennsylvania state line at a

point near Petersburg, Ohio, where occasionally, at times of heavy demands, comparatively small quantities of natural gas are, and were, sold and delivered to East Ohio by Hope, through the agency of Peoples. Except for the gas received by East Ohio at this connection, all of the natural gas purchased by East Ohio from Hope is, and was, received by East Ohio at the two aforementioned points on the Ohio-West Virginia state line.

(9) East Ohio owns and operates, and at all times since March 1944, owned and operated, a natural-gas 20-inch transmission pipeline, designated "T. P. L. No. 6," commencing at a point near Maumee, Ohio, and extending in a general easterly direction to its Brush Farm valve station in Summit County, Ohio; and a 10-inch branch transmission pipeline extending from such 20-inch pipeline, at Valley City, Medina County, in a northwesterly direction to Cleveland.

(10) At its westerly end, T. P. L. No. 6 connects with transmission facilities of Panhandle Eastern, which transport natural gas produced in the Amarillo and Hugoton fields in Texas, Oklahoma and Kansas. Such facilities of Panhandle Eastern include a 22-inch transmission pipeline extending in a northeasterly direction from within the State of Indiana across the northeasterly portion of Ohio,

3860 and a 16-inch transmission pipeline commencing at a point of connection with such 22-inch pipeline near the Ohio-Michigan boundary and extending to the point of commencement of T. P. L. No. 6 near Maumee, where it connects with T. P. L. No. 6. The portion of Panhandle Eastern's 22-inch pipeline that lies within Ohio is a direct continuation of the portion thereof that lies within Indiana; and Panhandle Eastern's 16-inch pipeline extending from its 22-inch pipeline to Maumee, and East Ohio's T. P. L. No. 6, constitute a direct extension from said 22-inch pipeline.

(11) East Ohio purchases, and at all times since 1944, did purchase, from Panhandle Eastern approximately

50,000 Mcf, of natural gas per day, transported by Panhandle Eastern from the aforementioned production areas in Texas, Kansas and Oklahoma to the point of connection with T. P. L. No. 6. From such point, East Ohio carries, and did carry, a portion of the natural gas in bulk, through T. P. L. No. 6 and the branch transmission pipeline commencing at Valley City, to Cleveland; and the remainder of the gas, through T. P. L. No. 6, to Brush Farm valve station. At Brush Farm valve station, the natural gas there transported enters East Ohio's main transmission system. A portion of the same is carried thence to Cleveland, Akron, Youngstown and other points of local distribution; and the remainder, to underground storage areas, for later distribution. Only natural gas received from Panhandle Eastern is, and was, carried in T. P. L. No. 6.

(12) Pursuant to contract between Panhandle Eastern and East Ohio, Panhandle Eastern maintains such high pressures in its 22-inch pipeline at the point of connection with its 16-inch pipeline as enable, and did enable, the natural gas to be delivered to East Ohio in volume, and to be carried through T. P. L. No. 6 and the Valley City branch pipeline and other transmission facilities, to the points of destination without additional compression, except that portion of the gas which is transmitted to the Youngstown-Warren-Niles area and to storage, such portion being pumped at Gross Farm.

(13) In the operations described in Findings (9) to (12), inclusive, natural gas flows, and did flow, continuously and uninterruptedly from the points of production in Texas, Oklahoma and Kansas to the points of distribution and storage areas in Ohio, and such operations constitute, and did constitute, an established course of business.

(14) During the year 1945, East Ohio handled a total of 78,626,546 Mcf. of natural gas, of which 61.7% was purchased from Hope, as hereinbefore described; 23.5% was purchased from Panhandle, as hereinbefore described; and 14.8% was gas originating in Ohio and produced or purchased by East Ohio.

(15) T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5, T. P. L. No. 4, T. P. L. No. 1, the Youngstown Branch lines and T. P. L. No. 6 are not, and at all times mentioned herein, were not, facilities used for the production, gathering, or local distribution of natural gas. Such facilities are, and were, utilized solely for the purpose, and serve the sole function, of carrying natural gas in bulk, at high pressure and without interruption of flow, to local distribution areas, and to storage areas for later distribution.

(16) T. P. L. No. 2, T. P. L. No. 3, T. P. L. No. 5, T. P. L. No. 4, T. P. L. No. 1 and the Youngstown Branch lines now are, and were in recent times, facilities used in the transportation of large volumes of natural gas from production areas in West Virginia and Texas to local distribution areas in Ohio; and formerly, at the times prior thereto herein mentioned, were used in the transportation of large volumes of natural gas from production areas in West Virginia to local distribution areas in Ohio; such facilities now are, and were at all times herein mentioned, facilities for the transportation of natural gas in interstate commerce.

(17) T. P. L. No. 6 now is, and was at all times since March 1944, a facility used in the transportation of large volumes of natural gas from production areas in Texas, Oklahoma and Kansas to local distribution areas in Ohio; such facility now is, and was, a facility for the transportation of natural gas in interstate commerce.

(18) East Ohio now is, and was at all times herein mentioned, engaged in the transportation of natural gas in interstate commerce, and is, and was, a "natural-gas company" within the meaning of that term as used in the Natural Gas Act.

(19) On November 30, 1943, In the Matter of The East Ohio Gas Company, Docket No. G-458, an opinion and order were entered by the Commission in which it determined that East Ohio was a "natural-gas company" within the meaning of the Natural Gas Act. No appeal from this

order was prosecuted by East Ohio, as provided for in Section 19(b) of the Natural Gas Act. On January 18, 1944, In the Matter of The East Ohio Gas Company, Docket No. G-266, the Commission issued an order in which it again determined that East Ohio was a "natural-gas company," and East Ohio sought no court review of such order, as provided for by the Natural Gas Act.

(20) All of the orders referred to in paragraphs (c), (d) and (e) hereof were duly served upon East Ohio, except Orders Nos. 100 and 113; and due and timely notice of said latter two orders was given to East Ohio. The time for compliance with each and all of said orders and requirements has expired.

(21) East Ohio has partially complied with the requirements of the order dated February 14, 1939, as supplemented by the order of April 14, 1939, in that it has furnished the information and data specified in subdivisions (i), (iv), (v) and (vi) of paragraph (c) hereof; but the Company has otherwise failed and refused to comply with said order of February 14, 1939, as supplemented, in that it has failed and refused to furnish any of the information or data specified in subdivisions (ii) and (iii) of said paragraph (c).

(22) East Ohio has failed and refused to keep its books of accounts in accordance with this Commission's Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, under Orders Nos. 69 and 69-A; but has kept its books of accounts in accordance with the uniform system of accounts prescribed by The Public Utilities Commission of Ohio, or permitted by The Public Utilities Commission of Ohio to be used. Since January 1, 1942, The Public Utilities Commission of Ohio has permitted the use of a uniform system of accounts the same in language as that of this Commission, and since that time East Ohio has been using such permitted system of accounts.

(23) East Ohio has failed and refused to make, or to file with the Commission by January 1, 1942 or at all, the re-

classification and original cost studies of gas plant required by Gas Plant Accounts Instruction 2-D of this Commission's Uniform System of Accounts Prescribed for Natural Gas Companies, and Order No. 73.

(24) East Ohio has failed and refused to file with the Commission the annual financial and statistical reports for "natural-gas companies", designated respectively FPC Form No. 133 (1939), FPC Form No. 133 (1940), FPC Form No. 133 (1941), FPC Form No. 133 (1942), FPC Form No. 2 (1943), and FPC Form No. 2 (1944), as required by Orders Nos. 63, 80, 86, 100 and 113.

(25) No cause or justification exists for the failure and refusal of East Ohio to comply with said orders and requirements as found in paragraphs (21), (22), (23) and (24) hereof.

The Commission orders that:

(A) East Ohio is hereby required to comply with the remaining requirements of the order of February 14, 1939, as supplemented by the order of April 14, 1939, by furnishing the information and data specified in subdivisions (ii) and (iii) of paragraph (c) hereof.

(B) East Ohio is hereby further required to comply with the aforesaid Orders Nos. 69, 69-A and 73; and to comply with the accounting requirements prescribed thereby, and applicable to it as a natural-gas company within the meaning of that term as used in the Natural Gas Act.

(C) East Ohio is hereby further required to comply with the requirements of the aforesaid Orders Nos. 63, 80, 86, 100 and 113.

(D) East Ohio shall, within 90 days from the date of this order, file with the Commission so much of the data, statements, information, cost studies and reports required by said order of February 14, 1939, as supplemented, by Gas Plant Accounts Instruction 2-D of the Uniform System of Accounts Prescribed for Natural Gas Companies, and by said Orders Nos. 73, 63, 80, 86, 100 and 113 as may reasonably be supplied within such period of time; and further,

within such period of 90 days, shall, respecting each and every of said orders and requirements, inform the Commission in writing as to when the Company can and will file the remainder of the required data, statements, information, cost studies and reports.

By the Commission.

LEON M. FUQUAY,
Secretary.

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3865

Filed Jul 24 1946

**Application of the East Ohio Gas Company for a Rehearing
and Stay.**

The East Ohio Gas Company, hereinafter referred to as "East Ohio," defendant herein, being aggrieved by the Commission's order of June 25, 1946 in the above proceedings entitled "Order Requiring Compliance With Orders Heretofore Issued," holding East Ohio to be a "natural-gas company" within the meaning of the Natural Gas Act and directing it to comply with certain orders heretofore issued by the Commission, hereby applies for a rehearing and stay in respect of such order in accordance with Section 19(a) of the Natural Gas Act.

3866 In support of this application* East Ohio respectfully represents:

I.

(a) The Commission, as in Connecticut Light & Power Co. v. Federal Power Commission, 324 U. S. 515 (1945), page 521, erred in that its "findings and opinion make no mention of the fact and appear to have given it no weight, that the predominant characteristic of the company's overall operation is that of a local and intrastate service."

*The following abbreviations will be used herein for reference to the record:
Ex.—exhibit; Stip.—stipulation; R. I.—reference by incorporation to former proceedings; Ohio G. C.—Ohio General Code; Sec.—section; East Ohio—The East Ohio Gas Company; Hope—Hope Natural Gas Company; Commission or FPC—Federal Power Commission; T.—transcript of testimony.

More specifically, the Commission erred in failing to make and give effect to each of the following numbered findings, requested by East Ohio and shown by undisputed evidence in the record, to wit:

1. Nature of East Ohio's Business. East Ohio is an Ohio corporation organized in 1910 as a merger of several other Ohio companies (R. I. Item 11, Ex. A; T. 74, 86). Its business from the beginning and now is the direct local distribution of gas in Ohio (T. 92, 108-A, 116, 133). It now serves natural gas to more than 551,000 consumers in 69 Ohio municipalities and adjacent territory, having an estimated population of more than 2,000,000 people, of which the principal are Cleveland, Akron, Canton, Massillon and Youngstown (Ex. 3, p. 1). In each of these communities East Ohio has pipe lines of various sizes and carrying various pressures to serve individual consumers at the premises where consumption occurs (See Ex. N to Application in FPC Docket No. G-695, T. 242, 246-8).

2. The total sales of East Ohio in 1945 were as follows (Ex. 3, p. 2):

	In M.c.f.
Sold to domestic consumers	46,674,457
Sold to industrial consumers	30,126,754
Field sales	627,196
 Total sales	 77,428,407

3. All sales to domestic and industrial consumers were made through East Ohio's local distribution systems 3867 in the 69 communities served (T. 92). No sales to industrial or other consumers from pipe lines outside of those communities were made (T. 116). No sales of any kind of out-of-state gas or a mixture of out-of-state and Ohio gas were made to any other company for resale (T. 116).

4. In each of the many incorporated communities served by East Ohio it has a local franchise for distribution (T.

117; R. I. Item 11, Ex. C, T. 74-75; Ex. 6). The rates for that service, both domestic and industrial, are fixed in each instance either by an ordinance passed by the municipal council and accepted by East Ohio, as provided in Ohio G. C. Secs. 3982 and 3983, or by order of The Public Utilities Commission of Ohio, either under a proceeding initiated by East Ohio under Ohio G. C. Secs. 614-20 et seq. or by an appeal from a municipal ordinance fixing an unacceptable rate under Ohio G. C. Secs. 614-44 et seq. Regardless of how the rate is fixed a schedule covering domestic and industrial service is filed with the Commission. All gas in 1945, except field sales, was sold to domestic and industrial consumers under the rate schedules now on file with the Ohio Commission as reproduced in Ex. 6 (T. 115-120).

5. East Ohio's only other sales are field sales in an insignificant amount (T. 120; Ex. 3, p. 2). Field sales in their entirety are made from the Ohio producing fields and the gas is entirely consumed in Ohio (T. 93).

6. Additionally, East Ohio never has and does not now transport natural gas in interstate commerce, or otherwise, for any other person, nor has it ever held itself out as being willing to undertake this service (T. 108-A). No gas is ever moved from East Ohio's pipe lines to points outside of the state (T. 97-102).

7. Regulation of East Ohio by the Ohio Commission. The Ohio Public Utilities Act defines as a public utility subject to the jurisdiction of The Public Utilities Commission of Ohio a company "engaged in the business of supplying natural gas for lighting, power or heating purposes to consumers within this state" (Ohio G. C. Secs. 614-2, -2a). "The jurisdiction, supervision, powers and duties of" the Ohio Commission are declared to extend to every public utility "the plant or property of which lies wholly within this state," to companies operating the same, and to the records and accounts of the business thereof done within this state (Ohio G. C. Sec. 614-4). The Ohio Commission

is given the power of general supervision (Ohio G. C. Sec. 614-8), to examine records (Ohio G. C. Sec. 614-7), to prescribe systems of accounts (Ohio G. C. Sec. 614-10), to compel the furnishing of adequate facilities (Ohio G. C. Sec. 614-13), to prevent rebates and discrimination (Ohio G. C. Secs. 614-14, -15), to fix and order changes in rates other than those fixed by municipal ordinance (Ohio G. C. Secs. 614-20 et seq.), to hear appeals from and set aside ordinance rates and fix substitute rates (Ohio G. C. Secs. 614-44 et seq.), to prescribe the form of annual reports (Ohio G. C. Sec. 614-48), to prescribe proper depreciation charges and require the setting up of a depreciation fund (Ohio G. C. Secs. 614-49, -50), to authorize the issuance of securities (Ohio G. C. Sec. 614-53), to approve or forbid the purchase or sale of property (Ohio G. C. Sec. 614-60), and many other usual regulatory powers.

8. Since its creation in 1911 the Ohio Commission has repeatedly exercised its regulatory powers over all the business activities and property of East Ohio. The formal regulatory proceedings before the Ohio Commission involving East Ohio are listed in Ex. 7. A summary of these proceedings is as follows (T. 128-130):

Proceedings	No.
Involving rates	160
Involving acquisition or sale of property	77
Relating to issuance of securities	11
Relating to accounting practice	4
Relating to termination or beginning of service	3
General complaints as to service, etc.	3
<hr/>	
Total	258

9. In addition to these formal proceedings East Ohio has been required to file annual reports on forms prescribed by the Ohio Commission, conform to the Ohio Commission's uniform system of accounts, install depreciation rates fixed by the Ohio Commission, and submit to investigation and

examination of various matters by the Ohio Commission (T. 130-131). In the recent Cleveland rate case the Ohio Commission examined for depreciation and valued all of East Ohio's property, whether classified in its accounts as production, storage, transmission or distribution, except distribution property outside the Cleveland area and not involved in the Cleveland rate case (T. 131-132). In short

3869 East Ohio has no activities of any kind not under supervision and regulation by the State of Ohio and no public utility service or property not regulated in Ohio (T. 130-131).

10. **East Ohio's Gas Supply.** East Ohio for many years has purchased gas from Hope, delivered by Hope at the Ohio state line. The price at which all of Hope gas is sold to East Ohio was fixed in a recent rate proceeding by the FPC and is set forth in schedules filed pursuant to orders of the FPC (T. 104, R. I. Item 13, T. 75). More recently East Ohio has been purchasing part of its supply from Panhandle Eastern Pipeline Company delivered by Panhandle to East Ohio at Maumee, Ohio, where the lines of the two companies connect (Ex. 5, p. 5). This gas is likewise sold to East Ohio under a rate fixed by order of the FPC in a rate proceeding and is set forth in schedules filed pursuant to FPC orders (R. I. Item 14, T. 75-76). The balance of East Ohio's supply it procures in the Ohio fields either by production or by purchase from other Ohio producers at or near the well mouth (E. O. X. 3, p. 2).

11. **All East Ohio Property used for Local Distribution.** Connecting its various sources of supply with its local distribution centers East Ohio has the usual pipe lines of varying sizes and operated under various pressures, valve stations, regulator stations, compressing stations and other equipment, and an extensive underground storage area where both out-of-state and Ohio gas is stored in periods of slight demand for use in periods of large demand (Ex. 4; T. 96-102, 106-108A, 144-145, 209, 214).

12. The center of East Ohio's system for controlling supplies to its various local distribution areas is at Gross Farm Station located just north of Canton (Ex. 4; T. 108A, 214). This Station is connected by pipe lines with all distributing areas as well as with the Ohio producing fields. Into it also run the East Ohio pipe lines carrying Hope gas from the Ohio River and those carrying the surplus of Panhandle gas not earlier diverted to Cleveland or other points (Ex. 4). At Gross Farm Station the gas can be so controlled by valves and regulators and compressing station as to flow to any part of the system where it is needed. This is true of the out-of-state gas as well as the Ohio gas (T. 108A, 214).

13. The total number of miles of pipe line owned and operated by East Ohio as of December 31, 1945 was as follows, using the accounting classification required by The Public Utilities Commission of Ohio (Ex. 3, p. 1):

	Miles
Storage lines	672
Field lines	1,011
Transmission lines	903
Distribution lines	5,490

14. All property of East Ohio of every kind and nature is located solely in the State of Ohio and it owns no pipe lines that cross the state line (T. 87-90, 132).

15. The sole business of East Ohio is the local distribution of gas and all of its property in the State of Ohio, regardless of its classification into production, transmission and distribution property, is used solely and exclusively to that end (T. 138-144). If East Ohio's distribution business were terminated it would have no use whatever for any of its property (T. 133). Its purchases and sales, receipts and deliveries are all in Ohio (T. 133).

16. There has been no substantial change in the general character of East Ohio's business and operations since the

passage of the Natural Gas Act in 1938. While an additional pipe line to take out-of-state gas was constructed to Maumee, Ohio, in 1943 (I. C. Item 15, T. 78), the only result was that East Ohio thereafter had Panhandle as well as Hope delivering out-of-state gas to it in Ohio. While all statistics relating to East Ohio have changed from year to year it has at all times since 1937 been true that its supply consists to the extent of 70% to 85% of out-of-state gas and the remainder of Ohio gas; that the price of out-of-state gas is regulated or subject to regulation by the FPC at delivery points to East Ohio; that all of East Ohio's property is in Ohio and serves no other purpose than to carry the out-of-state and Ohio gas to its own consumers' meters and appliances in Ohio; that East Ohio makes no sales for resale and does not transport or hold itself out as willing to transport gas for others; that East Ohio has no public utility obligations of any kind other than for local distribution in Ohio; and that all its rates, property and activities are fully regulated by Ohio (R. I. Items 2, 6, 11, 13, 14, 15, 16, 17, T. 73-81).

17. Cost of Compliance with Orders. East Ohio's application for rehearing in respect of the FPC orders of 3871 February 14 and April 14, 1939 in Docket No. G-115 showed that the cost of compliance therewith by East Ohio would exceed \$200,000 and would not be useful in determining any local rate controversies.

18. During each of the years since the passage of the Natural Gas Act, and before, East Ohio has been keeping its books of accounts in accordance with the uniform system of accounts prescribed by The Public Utilities Commission of Ohio or permitted by The Public Utilities Commission of Ohio to be used, and has filed annual reports, depreciation rates and similar accounting and other data with the Ohio Commission (T. 71, 130). The cost to East Ohio of attempting to comply with FPC Orders Nos. 69, 69-A and 73 requiring reclassification and a statement of original cost of all of East Ohio's properties—general, distribution, trans-

mission and production,—would now be between \$1,500,000 and \$2,000,000 (T. 137-138).

II.

(a) In view of the above requested findings, required by the record, which the Commission failed to make or consider, it erred in its Finding (15) that East Ohio's transmission lines Nos. 1, 2, 3, 4, 5 and 6 and its Youngstown branch lines "are not, and at all times mentioned herein, were not, facilities used for the * * * local distribution of natural gas."

(b) The Commission erred in not finding and holding that the transmission lines referred to in paragraph (a) above in their entirety are facilities used by and useful to East Ohio solely for the local distribution of natural gas in Ohio within the meaning of Section 1 (b) of the Natural Gas Act; that East Ohio is not a "natural-gas company" as defined in the Natural Gas Act, and that the Commission is without jurisdiction over East Ohio.

(c) The Commission erred in not finding and holding that the transportation by East Ohio of its own gas through the transmission lines referred to in paragraph (a) above, solely for the purpose of meeting its public utility obligations of local distribution in Ohio, is "other transportation" within the meaning of Section 1 (b) of the Natural Gas Act; that East Ohio is not a "natural-gas company" as defined in the Natural Gas Act, and that the Commission is without jurisdiction over East Ohio.

III.

Even though East Ohio were properly held to be a "natural-gas company" within the meaning of the Natural Gas Act, which East Ohio denies, the Commission nevertheless erred in requiring East Ohio to comply in full with the Commission's accounting requirements as set forth in its Orders Nos. 69, 69-A and 73 for the reason that said accounting requirements apply equally to all classes of prop-

erty owned by a "natural-gas company" while the jurisdiction and authority of this Commission by the provisions of Section 1 (b) do not extend to the local distribution of natural gas, or to the facilities used for such distribution, or to the production or gathering of natural gas, or to the facilities used for such production or gathering. To the extent that said former orders of this Commission, with which East Ohio is directed to comply by virtue of said order of June 25, 1946, require East Ohio to conform to the accounting requirements of the Commission as set forth in said orders in respect of any facilities or business, other than those relating to the transportation of natural gas in interstate commerce, each of said orders is beyond the power of this Commission and invalid. Each of said orders should therefore be modified so as to apply only to such transportation property and operations.

IV.

The Commission's order of June 25, 1946 requires East Ohio to comply with a certain former Commission order in Docket No. G-115 dated February 14, 1939, as modified by an order dated April 14, 1939. The Commission will recall that these 1939 orders were both occasioned by an application instituted by the City of Cleveland in 1938 in which it was represented to this Commission that it would be helpful to the City of Cleveland in certain rate negotiations and litigation in which it was then engaged with East Ohio to determine on an original cost basis the cost to East Ohio of transporting natural gas from the Ohio River to the Cleveland city gate. Accordingly the Commission's orders required East Ohio to prepare and file a statement of the original cost of all facilities then used in transporting gas from the Ohio River to Cleveland city gate and the cost of all operating expenses attributable to that operation, all as of December 31, 1938.

By action of The Public Utilities Commission of Ohio in East Ohio Gas Company v. City of Cleveland, 27

3872 P. U. R. (N.S.) 387 (1939) and affirmance thereof by the Supreme Court of Ohio in The East Ohio Gas Co. v. Public Utilities Commission of Ohio, City of Cleveland v. Public Utilities Commission (Two Cases), 137 O. S. 225, 35 P. U. R. (N. S.) 158 (1940) the 1937-1939 rate litigation between East Ohio and the City of Cleveland pending at the time of the FPC orders referred to above was finally disposed of. By further action of The Public Utilities Commission of Ohio in The East Ohio Gas Company v. City of Cleveland, 56 P. U. R. (N. S.) 73 (1944) the rate litigation between East Ohio and the City of Cleveland pending subsequent to 1939 was finally disposed of for the period from 1939 through 1946, from which action neither East Ohio nor the City prosecuted any error or appeal. The rate fixed by the Ohio Commission in the latter proceedings has continued and is now the rate paid in Cleveland and there are now no rate controversies in any city served by East Ohio (Ex. 6, p. 22, T. 153).

Since, therefore, the controversy which occasioned these orders, directed only to East Ohio and not to all "natural-gas companies," has been completely disposed of; since those orders request data as of December 31, 1938, which is now a wholly meaningless date for any practical purpose, and since the expense to East Ohio of complying with these orders, if it be held to be a "natural-gas company," would exceed \$200,000, we earnestly suggest that the Commission reconsider and now modify its order of June 25, 1946 so as expressly to declare that East Ohio need not comply with the Commission's former order of February 14, 1939, as modified by its order of April 14, 1939. If a further rate controversy should develop between East Ohio and any of the cities served by it and if the Commission should hereafter be of the opinion on application by any such city that it could usefully require similar or other information from East Ohio, the Commission could then make an appropriate and up-to-date order. The present order is, we suggest, in a legal sense arbitrary and unreasonable in that

it requires East Ohio to spend more than \$200,000 to comply with former 1939 orders useful only, if at all, in determining a question that is long since moot.

V.

(a) The investigation instituted in Docket No. G-115 and the information required by the orders in the above proceedings and the other orders involved are solely for the purpose of compiling information having no possible relevancy to any governmental object except the regulation of East Ohio's rates for the local distribution of gas in Ohio. The orders and any provisions of the Natural Gas Act construed to authorize their issuance therefore constitute an invasion of the powers reserved to the State of Ohio under the Tenth Amendment to the Constitution of the United States and an invalid extension of the powers delegated to the federal government by Article I, Section VIII thereof and are unconstitutional and void.

(b) The investigation instituted and the information required by the above-mentioned orders would result in a compilation of data which can be of no useful purpose even in the regulation of East Ohio's rates for the local distribution of gas in Ohio in view of the Ohio law relating to the matter of regulation of rates. To furnish the same would require an expense to East Ohio of up to \$2,000,000. Under these circumstances insistence by the Commission upon the furnishing of this information, even if the Commission otherwise has statutory and constitutional jurisdiction, is an abuse of its statutory powers and is arbitrary and invalid as an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States and as a deprivation of East Ohio's property without due process of law and a taking of its property for public use without just compensation in violation of the Fifth Amendment thereto.

Wherefore, East Ohio, respectfully representing that grave errors have been committed in the orders heretofore made in these proceedings and in the order of June 25, 1946, requests a rehearing, reconsideration and vacation or modification of the Commission's order of June 25, 1946 and the orders therein referred to and further requests that the Commission issue a stay of said order of June 25, 1946 so that the East Ohio will not be in doubt as to its status under the Natural Gas Act and the Commission's rules and regulations and orders thereunder pending final determination of this matter.

Respectfully submitted,

THE EAST OHIO GAS COMPANY,
By JONES, DAY, COCKLEY & REAVIS, by

WILLIAM B. COCKLEY AND
WALTER J. MILDE,

1759 Union Commerce Building,
Cleveland 14, Ohio,

WILLIAM A. DOUGHERTY AND
C. W. COOPER,
30 Rockefeller Plaza,
New York, N. Y.

July 22, 1946.

3875 STATE OF OHIO,

Cuyahoga County, ss.

William B. Cockley, being first duly sworn, deposes and says that he is an attorney for The East Ohio Gas Company, a corporation and the appellant herein, that he is duly authorized in the premises, that he has read the foregoing application for rehearing and stay and knows the contents thereof; and that the same are true as he verily believes.

WILLIAM B. COCKLEY.

Sworn to before me and subscribed in my presence this
22nd day of July, 1946.

FREDERICK WOODBRIDGE,
Notary Public.

My commission expires Mar. 22, 1949.

3877 Filed Jul 24 1946

**Application of the State of Ohio and the Public Utilities
Commission of Ohio for a Rehearing.**

The State of Ohio * and The Public Utilities Commission of Ohio, intervenors herein, hereby apply, in accordance with Section (19)a of the Natural Gas Act, for a rehearing in respect to order issued by said Commission on June 25, 1946, in the above proceeding, wherein The East Ohio Gas Company, defendant herein, was declared to be a "natural-gas company" within the meaning of the Natural

Gas Act and as a result of such finding East Ohio was
3878 directed to comply and to conform to certain orders
heretofore issued by said Commission. Ohio has
been aggrieved by said orders, hereinabove referred to, in
that the assumption of jurisdiction by this Commission
represents an unwarranted and illegal invasion of the
powers of Ohio to regulate its local natural gas distributing
company, which powers were clearly preserved to Ohio
under the provisions of the Natural Gas Act and by the
intent of Congress.

In connection with and in support of this application,
Ohio respectfully submits:

I

The Commission was in error in failing to make findings
and give consideration to the following undisputed facts
as set forth in the record, to-wit:

* The following abbreviations will be used herein: "Ohio"—The State of Ohio; "P. U. C. O."—The Public Utilities Commission of Ohio; "FPC" or "Commission"—The Federal Power Commission; "Ohio G. C."—Ohio General Code; "East Ohio"—The East Ohio Gas Company.

1. The prior and existing jurisdiction of Ohio over local natural gas distributing companies, covering authority to regulate all phases of such utility operations. The Ohio Public Utilities Act defines as a public utility, subject to its jurisdiction, a company "engaged in the business of supplying natural gas for lighting, power or heating purposes to consumers in this state," (Ohio G. C., Sections 614-2 and 614-2a).

Other Ohio statutes covering utility regulations are as follows:

(1) Ohio G. C., Section 614-4, declares that P. U. C. O. has jurisdiction and powers and duties to regulate every public utility, "the plant or property of which lies wholly within this state", to regulate companies operating 3879 said property and the records and accounts of the business thereof done within this state, and

(2) P. U. C. O. is given the power of general supervision, (Ohio G. C., Section 614-8),

(a) to examine records (Ohio G. C., Section 614-7),
 (b) to prescribe systems of accounts (Ohio G. C., Section 614-10),

(c) to compel the furnishing of adequate facilities (Ohio G. C., Section 614-13),

(d) to prevent rebates and discriminations (Ohio G. C., Sections 614-14 and 614-15),

(e) to fix and order changes in rates other than those fixed by municipal ordinance (Ohio G. C., Section 614-20 et seq.),

(f) to hear appeal from and set aside ordinance rates, and fix substitute rates (Ohio G. C., Section 614-44 et seq.),

(g) to prescribe form of annual reports (Ohio G. C., Section 614-48);

(h) to prescribe proper depreciation changes and require the setting up of a depreciation fund (Ohio G. C., Section 614-49),

(i) to authorize the issuance of securities (Ohio G. C., Section 614-53),

(j) to regulate the purchase or sale of property (Ohio G. C., Section 614-60),

(k) and many other regulatory powers.

2. East Ohio has been under the jurisdiction of P. U. C. O. for approximately 35 years and said regulatory jurisdiction has extended to and included all phases of public utility regulation.

3. Ohio has continuously regulated said East Ohio during said period.

4. The matters presently the subject of the Commission's recent orders in this cause have within the past 12 years been the subject of three complete investigations, each of which included a detailed valuation of the entire production, transmission and distribution properties of East Ohio.

5. East Ohio is a local natural gas distributing company serving 69 local incorporated communities in Ohio; said company makes no sales of gas for resale; all gas is sold under local franchises for local distribution, except field gas; all gas sold is entirely consumed in Ohio.

6. East Ohio does not transport natural gas in interstate commerce, in intrastate commerce or otherwise for any other person or company and has no gas moving in East Ohio's facilities to any point outside Ohio.

7. Rates for all services, domestic and industrial, are fixed either by ordinance passed by a municipal council and accepted by East Ohio, as provided by Ohio G. C., Sections 3982 and 3983, or by P. U. C. O. in an initial proceeding by the utility under Ohio G. C., Section 614-20 et seq., or by appeal from a municipal ordinance under Ohio

G. C., Section 614-44 et seq.; and in all cases, regardless of how the rate is fixed or determined, a schedule setting forth said rates and charges, both domestic and industrial, is filed with P. U. C. O.

8. All the property of East Ohio used in the production, storage, transmission or distribution is located within the territorial boundaries of Ohio, and such facilities are used solely for local distribution purposes.

9. P. U. C. O. has designated and regulates the system of all accounts of East Ohio, including such accounts, as production, storage, transmission or distribution; no public utility is actively conducted by East Ohio except under the supervision and jurisdiction of Ohio, and it furnishes no public utility service nor operates public utility property except under supervision and jurisdiction of Ohio.

10. The information and data requested by FPC in its order to East Ohio would result in the duplication of information already many times required to be furnished and presently on file with P. U. C. O.

11. If East Ohio is forced to comply with FPC's orders of February 14, 1939, and April 14, 1939, it will necessitate the expenditure of approximately \$200,000; the expenditure of such sum for such demanded information would serve no useful purpose; there is no present need for such information; there is no present rate litigation in Ohio, wherein such information could be put to use.

12. The cost, estimated to be approximately \$1,500,000, to East Ohio (and to Ohio gas consumers) to be expended in the company's compliance with the Commission's orders Nos. 69, 69-A and 73, requiring reclassification and statement of original cost of all of East Ohio's properties, including general, distribution, production and transmission, is not justified in this record nor is there evidence that said expenditure will result in any useful purpose to the gas consumers in Ohio.

II

1. In addition to errors of FPC herein in failing to make findings and give consideration to the above (1 to 12) facts, said Commission erred in not finding and holding that the transmission lines, Nos. 1, 2, 3, 4, 5, and 6, and Youngstown branch of East Ohio, are facilities used and useful solely for local distribution of natural gas within the meaning and intent of Section 1(b) of the Natural Gas Act and that the Commission is without jurisdiction over East Ohio.

2. The Commission erred in finding that said transmission lines, above referred to, "are not, and at all times mentioned herein, were not, facilities used for the *** local distribution of natural gas".

3. The Commission erred in not finding and holding that movement of natural gas owned by East Ohio in the above-mentioned lines, solely to meet local regulated distribution obligations in Ohio, is "other transportation" within the meaning and intent of Section 1(b) of the Natural Gas Act and that the Commission is without jurisdiction over East

Ohio.

3883 4. The Commission erred in ordering East Ohio to comply with all of the Commission's accounting system as set out in its orders Nos. 69, 69-A and 73, for the reasons that said accounting system applies to all classes of property owned and operated by East Ohio and since said Commission's jurisdiction does not (under Section 1(b) of the Natural Gas Act) extend to local distribution, or to facilities for such local distribution, or to production or gathering, or to the facilities used for such production or gathering, East Ohio is being compelled to set up two separate expensive accounting systems to regulate identical property, the first system of accounts as required and ordered by P. U. C. O. under Ohio law, and the second system of accounts as ordered by the Commission, contrary to the Natural Gas Act and the intent of Congress.

5. The Commission erred in its attempt to assume authority over East Ohio as a natural gas company and over its accounting system on the jurisdictional test that out-of-state gas is carried in its transmission lines or that the pressure of said out-of-state gas is controlled by contract. The Commission erred in not using the test of whether said transmission properties are local distribution facilities.

6. The Commission erred in not giving consideration to the historical intent of Congress in enacting the Natural Gas Act, which declares that FPC shall not have jurisdiction over facilities used in local distribution of natural gas,

and that the Commission's authority "extends only
 3884 to those matters which were not subject to regulation by the states".

7. The Commission erred in exceeding its jurisdiction in attempting to impose dual regulation upon a local natural gas company presently under Ohio's jurisdiction.

8. The Commission erred in exceeding its jurisdiction in attempting to extract information from a local natural gas distributing company where the avowed purpose of such information is to aid in the setting of a local burner rate contrary to the purpose and intent of the Natural Gas Act.

9. The Commission erred in its assumption that the facts and its findings in this cause bring East Ohio within the purview of the Natural Gas Act and, therefore, subject to its jurisdiction for accounting purposes or otherwise.

10. The Commission erred in failing to find that Ohio has been excluded by the Natural Gas Act of control and jurisdiction over the property and accounting systems, herein the subject of this cause; in failing to find and describe accurately the bounds of jurisdiction of the FPC; and in failing to find that the jurisdiction of Ohio had been properly considered and that the intent of the Natural Gas Act was to grant deliberate overlapping of authority.

III

1. The orders of the Commission in this cause and the provisions of the Natural Gas Act construed to be the basis for such orders, constitute an unwarranted and
 3885 illegal invasion of the powers reserved to Ohio under the Tenth Amendment to the Constitution of the United States and an unwarranted and invalid extension of the powers delegated to the federal government by Article I, Section 8, thereof, and are unconstitutional and void.

2. The orders of FPC in this cause required the expenditure of funds upward to \$2,000,000 for which the record herein shows no useful purpose nor evidence that would substantiate any assumption of a useful purpose other than

a veiled attempt to participate in the setting of a local distribution rate for natural gas not subject to federal regulation. The assumption of jurisdiction by the Commission for such purposes is unwarranted, arbitrary, invalid and in violation of the Fourth Amendment to the Constitution of the United States as an unreasonable search and seizure and as a means of depriving a local natural gas distribution company of property under the control of Ohio without due process of law, and a taking of its property for public use without just compensation in violation of the Fifth Amendment of the Constitution of the United States.

Wherefore, the State of Ohio and The Public Utilities Commission of Ohio respectfully submit that serious errors have been committed in the order made herein, request a rehearing for the purpose of reconsidering and
 3886 vacating the Commission order of June 25, 1946, and the orders therein included and referred to.

Respectfully submitted,

HUGH S. JENKINS,
Attorney General of Ohio,
 State House, Columbus 15, Ohio,

HARRY G. FITZGERALD, JR.,
Assistant Attorney General,
 State Office Bldg., Columbus 15, Ohio,
Attorneys for the State of Ohio and
The Public Utilities Commission of Ohio.

July 22, 1946.

3887

August 23, 1946

Order Granting Rehearing and Stay

Upon consideration of the application of The East Ohio Gas Company, as filed on July 24, 1946, for a rehearing and stay of the Commission's order of June 25, 1946, and the orders to which reference is made therein, and the joint

application of the State of Ohio and the Public Utilities Commission of Ohio, as filed on July 24, 1946, for a rehearing with respect to said order of June 25, 1946, and the orders to which reference is made therein;

The Commission finds that:

Good cause exists for granting such rehearing and for granting a stay as hereinafter provided.

The Commission orders that:

(A) The above-mentioned applications for rehearing on said order of June 25, 1946, be and the same are hereby granted, such rehearing to be held commencing at 3888 10:00 a. m. (E. S. T.) on October 23, 1946, in the Hearing Room of the Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

(B) Said rehearing shall be limited to oral argument before the Commission by the parties of record who have heretofore appeared in the proceeding.

(C) Said order of June 25, 1946, be and the same is hereby stayed, pending determination of this matter upon rehearing.

By the Commission.

LEON M. FUQUA,
Secretary.

* * * * *

**3904 Opinion No. 158 on Rehearing, and Order
 Entered Nov. 6, 1947.**

By our order of June 25, 1946, in the above-entitled consolidated matters, The East Ohio Gas Company (East Ohio), was again found to be a "natural-gas company" within the meaning of the Natural Gas Act² and was required to comply with certain orders theretofore issued.

² This Commission twice previously had found East Ohio to be a "natural-gas company": *Re The East Ohio Gas Company*, Docket No. G-458, 4 F. P. C. 15 (1943); and *Re The East Ohio Gas Company*, Docket No. G-266, 4 F. P. C. 497 (1944). Again, on July 3, 1946, we made a like finding, *Re The East Ohio Gas Company*, Docket No. G-695. East Ohio did not seek judicial review of any of these orders, as provided for by Section 19(b) of the Natural Gas Act.

Thereafter, East Ohio and interveners, the State of Ohio and the Public Utilities Commission of Ohio, applied for rehearing and stay. Although the applications reiterated, in the main, arguments urged previously and considered by the Commission, we granted a rehearing, and stayed the order, because of the seriousness with which it had been contended that East Ohio is not a "natural-gas company" —(1) since it makes no sales of out-of-state gas for resale, (2) since it transports its own natural gas "solely for the purposes of meeting its public utility obligation of local distribution" in Ohio, and (3) since its transmission lines are, it is argued, "facilities used for" local distribution.

3905

FACILITIES AND OPERATIONS

The salient facts are without dispute, and the operations described below constitute an established course of business.

East Ohio owns and operates not less than 650 miles of high-pressure, large-diameter, natural-gas transmission pipelines connecting with like lines of Hope Natural Gas Company (Hope), at the Ohio West Virginia state line, and with a like line of Panhandle Eastern Pipe Line Company (Panhandle), at a point in the northwestern part of Ohio. These lines, extending from the points of connection with Hope and Panhandle, are a part of East Ohio's transmission system connecting its sources of supply with its local distribution areas.

Natural gas produced in Texas, Oklahoma, Kansas, and West Virginia is purchased by East Ohio from Hope and Panhandle. The pressure at which such out-of-state gas is received by East Ohio (from Hope at about 290 p.s.i.; from Panhandle at about 320 p.s.i.) is sufficient to propel it from points of connection to the local distribution areas in a continuous and uninterrupted flow, for the most part without additional compression. And, since movement prior to receipt by East Ohio is continuous and uninterrupted, the

gas flows continuously and uninterruptedly from points of production in Texas, Oklahoma, Kansas, and West Virginia to points of distribution in Ohio.³

By means of its transmission pipelines, East Ohio thus transports in bulk the natural gas received from Hope and Panhandle to East Ohio's town-border regulating and metering stations from which extend its distribution lines whereby East Ohio sells natural gas at retail for public consumption in 69 Ohio municipalities and adjacent areas, including Cleveland, Akron, Canton, Massillon, and Youngstown.

During 1945, East Ohio transported 76,626,546 Mcf of natural gas through its facilities. Of this total, 85.2% was out-of-state gas purchased by East Ohio, 61.7% from Hope and 23.5% from Panhandle. The remaining 14.8% was produced in Ohio. The first point at which such locally-produced gas enters the transmission lines of East Ohio is approximately 40 miles from the Ohio-West Virginia state line. No locally-produced gas is transported in the 112-mile line which connects with Panhandle.

At the end of 1945, approximately 27.7% of East Ohio's total gas utility property was classified in its accounts as "transmission" property, having a corresponding value of \$23,563,526.04. So classified were 903 miles of transmission lines, including the 650 miles, described above. The remaining 72.3% of its property was classified, accounting-wise, to uses other than transportation. East Ohio makes no sales in interstate commerce of natural gas for resale.

JURISDICTION

The foregoing facts pointedly show that East Ohio is "engaged in the transportation of natural gas in interstate commerce," and that it is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.⁴

³ Section 1(b) provides:

"The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial,

3907 We are again impelled to this conclusion after careful consideration of the jurisdictional contentions here advanced. In large part, the substance of these contentions was treated in the Commission's opinion in *Re The East Ohio Gas Company*, Docket No. G-458, 4 F. P. C. 15. The reasoning there expressed in the treatment of "Jurisdiction," and directly relevant here, specifically at pages 19, 20, and through the last full paragraph on page 21, we affirm and here adopt. Likewise, we affirm and adopt the discussion of jurisdiction under the Natural Gas Act, found in *Re The East Ohio Gas Company*, Docket No. G-115, 1 F. P. C. 586, at pages 591 and through the second full paragraph on page 592. Thus, there is no need to treat further the contentions: (1) that a company transporting natural gas in interstate commerce cannot be a "natural-gas company" unless it also makes sales
 3908 in interstate commerce for resale,⁴ (2) that Congress intended, by the Natural Gas Act, only to regulate rates, and (3) that, within the meaning of Section 1(a) of the Act, a company cannot be said to engage in the "business" of transportation when it transports neither for sale for resale nor for others for hire, and hence it cannot be regulated under the Act. We turn, then, to some of the other arguments made.

industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Section 2(6) provides:

" 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

⁴ In addition to instances cited in footnote (1), *supra*, for examples of holdings that a company is, or will be, a "natural-gas company" solely by reason of transportation in interstate commerce, see: *Re Southern California Gas Company and Southern Counties Gas Company of California*, Opinion No. 134, May 31, 1946; *Re the River Gas Company*, 4 F. P. C. 1098; *Central Illinois Public Service Company v. Panhandle Eastern Pipe Line Company et al.*, 4 F. P. C. 1043 (order aff'd, *Kentucky Natural Gas Corp. v. Federal Power Commission*, 159 F. 2d. 215); *Re Republic Light, Heat and Power Company, Inc.*, 4 F. P. C. 884; *Re Producers Gas Company*, 4 F. P. C. 418; and, to the same effect, *Re Empire Gas and Fuel Company, Limited*, 3 F. P. C. 1099.

Section 1(b) of the Act requires that, "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, * * * and to natural-gas companies engaged in such transportation * * *, but shall not apply to any other transportation * * *." In the face of this language, a claim to exemption is made on the ground that the interstate movement by East Ohio of its own gas, in its own lines, for its own purposes of local distribution, is "in no proper sense a transportation business of any kind," and is thus "other transportation," within the meaning of 1(b). "Other transportation" is said to mean "transportation in interstate commerce but of a character not exclusively subject to federal regulation." The short but complete answer is that 1(b) plainly does not so provide and that "other transportation" can mean only some transportation other than "transportation of natural gas in interstate commerce."

3909 It is also contended that East Ohio's transmission pipelines, used in transporting natural gas in bulk to its centers of local distribution, are "facilities used for" local distribution. And, it is argued, exemption follows because Section 1(b) requires that "The provisions of this act * * * shall not apply * * * to the local distribution of natural gas or to the facilities used for such distribution * * *." "End use" is said to control the classification of a facility. Such a test apparently would require that facilities be classified according to the principal ultimate purpose they serve. And it would seem that such a construction of Section 1(b) would exempt virtually all facilities used in the natural-gas industry. For the principal ultimate purpose, the "end use," of nearly all facilities is either to bring gas to centers of local distribution, or thereafter to distribute gas locally.

But this unique contention must be, and is, rejected. Classification depends upon the function for which a facility is used. For it is clear throughout the Act that Congress contemplated a division of the industry according to

functions, namely, those of production, gathering, transportation, and local distribution.⁵ It is, then, illogical to contend that here the 650 miles of transmission lines, which serve solely the function of transportation, are "facilities used for" local distribution. Moreover, if such facilities, serving solely the function of transportation, were so exempt under Section 1(b), important regulatory provisions of the Act, notably all of Section 7⁶ regulating construction and extension of facilities and abandonment of service by natural-gas companies, would become meaningless in large part, if not entirely. And this, of course, Congress did not intend.

In view of the foregoing considerations, we explicitly find that East Ohio's 650 miles of transmission pipelines, described herein, are not "facilities used for" local distribution, and that East Ohio's transportation of out-of-state natural gas in such lines is neither "other transportation" nor "local distribution" within the meaning of Section 1(b).

In this connection, the legislative history of the Natural Gas Act reveals an unsuccessful attempt to have included in a predecessor bill (H. R. 5423, 74th Cong., 1st Sess.) amendments which would exempt companies of the type represented by the very company here involved, East Ohio. For example, one of these proposed amendments, that to Section 301(c) of H. R. 5423, read:

⁵ Recognition of like divisions, and that local distribution, as distinguished from transportation, does not commence until after town border regulating stations are reached, appears in a brief submitted by a Committee Representing Natural Gas Industry, which was presented by Mr. William A. Dougherty to the House Committee on Interstate and Foreign Commerce, holding hearings on H. R. 5423, a predecessor bill to the Natural Gas Act (Hearings on H. R. 5423, 74th Cong., 1st Sess., pp. 1786, 1790).

⁶ If no undue burden will thereby be placed upon a natural-gas company, the Commission, under Section 7 (a), may direct extension or improvement of transportation facilities and establishment of physical connections, under certain conditions. Though at present East Ohio has no spare capacity, it is, nevertheless, true that it does not provide natural-gas service to all communities in the general territory in which it operates.

Section 7 (e) requires certificates of public convenience and necessity for construction or extension of facilities. Such certificates have thrice been issued to East Ohio (citations in footnote (1), *supra*). And see pp. 9-10, *infra*.

3911 *** Provided, however, That after delivery of said
gas to a distributing company for distribution to
local consumers, *** any transmission to such con-
sumers shall be deemed to be intrastate commerce,
or in local distribution not subject to the jurisdiction of
the Commission." (Hearings on H. R. 5423, 74th Cong., 1st
Sess., p. 1668).

The proponent of the amendment, counsel for the National Association of Railroad and Utilities Commissioners, said that it was "drawn in the light of the decision of the United States Supreme Court in *East Ohio Gas Co. v. Tax Commission*, 283 U. S. 465, 470" (Ib. p. 1695).⁷ It is highly significant that no such amendment, and no provision paralleling it in form or substance, is to be found in the Natural Gas Act as finally enacted.

Still another contention is that regulation by this Commission will partially duplicate what is characterized as complete regulation by the State of Ohio. That contention apparently serves as premise for a claim that action by this Commission would, in these circumstances, constitute an invasion of the regulatory area assertedly reserved by Congress to the State. But this conclusion is supported by neither the language nor the history of the Act, even if its premise were sound.

Let us, however, examine the premise. There is here no significance to the point, repeatedly made, that East Ohio has no property or activities outside Ohio. Even though that be true, the State of Ohio lacks power to confer upon its Commission authority to require a certificate of public convenience and necessity for a transmission line used solely for transporting out-of-state gas, as for example, East Ohio's 112-mile line connecting with Panhandle.

Any prior doubt as to whether this be so, was resolved when Congress provided in Section 7(e) of

⁷ The effect of that decision in deciding our jurisdiction over East Ohio was dealt with in *Re The East Ohio Gas Company*, Docket No. G-458, 4 F. P. C. 15, 19; see also, *Re The East Ohio Gas Company*, Docket No. G-115, 1 F. P. C. 586, 591.

the Natural Gas Act for national control of this very matter (*Illinois Gas Co. v. Public Service Co.*, 314 U. S. 498, 506, 510; cf., *Colorado-Wyoming Gas Company v. Federal Power Commission*, 324 U. S. 626, 629-631). Moreover, it appears from the record that the Ohio Commission does not require the filing of reclassification and original cost studies of gas plant. And even if it did, our jurisdiction would remain unaffected. For, as was said in *Connecticut Light & Power Co. v. Federal Power Commission*, 324 U. S. 515, 533, with respect to jurisdiction under similar provisions of the Federal Power Act:

"* * * once a company is properly found to be a 'public utility' under the Act the fact that a local commission may also have regulatory power does not preclude exercise of the Commission's functions. Cf. *Northwestern Electric Co. v. Federal Power Commission*, 321 U. S. 119 * * *."

Again we say that Congress, in the Natural Gas Act, clearly provided jurisdiction over East Ohio. The legislative history of the Act, as well as Sections 5(b), 6, 7, 8, 9, and 10, among others, plainly point to the fact that protection of the public interest was deemed by Congress to make necessary federal regulation of such a company. Our responsibility is equally plain.

ORDERS INVOLVED

East Ohio complains that, even though it were properly held to be a "natural-gas company," the orders involved here are invalid.

The 1939 orders in Docket No. G-115 required, under authority of Sections 5(b) and 6(b), the furnishing of certain data relating to the cost of transporting gas 3913 from the Ohio River to the City of Cleveland. A then existing rate controversy between the City of Cleveland and East Ohio has been settled: Part of the requested data has been furnished, but East Ohio elected not to furnish all. It is argued that the remaining data will now serve no useful purpose, that the claimed cost of compli-

ance exceeds \$175,000, and that the order is, therefore, arbitrary.

First, we affirm and adopt the treatment in *Re The East Ohio Gas Company*, 1 F. P. C. 586, 592-595, of objections to the initial 1939 order. Turning to other objections, representatives of the City of Cleveland indicated, during the 1946 hearings, a continuing desire for the cost determination for which the data are sought. When further rate controversy develops, these very data will be useful and can readily be made current. Moreover, these same data must, in large part, be supplied in compliance with the other orders, to which we next turn.

They are the Commission's general accounting orders, issued under Sections 8(a), 10(a) and 16, which require installation of the uniform system of accounts, reclassification and original cost determination, and annual and statistical reports. To these orders, East Ohio objects because the cost of compliance is claimed to exceed \$1,500,000, and on the ground that the data sought can have relevancy, if to anything, only to the regulation of its local rates, a function reserved to the State of Ohio.

To sustain these objections, we would have to shut our eyes to all provisions of the Natural Gas Act, save those relating to only rates. For example, uniform accounting is necessary to effective regulation under Section 7. And original cost is a necessary incident to the establishment and maintenance of such a uniform system. In this connection, the legislative history of the Natural Gas Act indicates that, in 1935, the investment accounts of East Ohio reflected write-ups amounting to \$15,454,511.65.⁸

One of the objections to these orders is that requests for accounting data and requirements that accounts be kept may not extend beyond facilities subject to our jurisdiction

⁸ See: "Report on an Examination of Accounts and Records of the East Ohio Gas Co.," Sen. Doc. 92, Part S3, p. 1695 et seq. (70th Cong., 1st Sess.); and testimony of a Federal Trade Commission accountant examiner, *ib.*, commencing at p. 630.

under the Act. This argument, however, the Commission has previously considered and rejected (Re Billings Gas Company, et al., 2 F. P. C. 288, 289-290; Re Northwestern Electric Co., 2 F. P. C. 327, 330-331). To the position there taken, we adhere.

As to cost of compliance, that alone is no bar. Furthermore, we believe that effective regulation in the public interest provided for by Congress, the objective of the orders, is justification for legitimate cost of compliance. And, in any event, the unsupported estimate of cost of reclassification and original cost studies is not convincing, for our experience with other companies with greater property investment indicates that this estimate is considerably exaggerated.

Finally, protection of the public interest requires uniform accounting by natural-gas companies, as was contemplated by Congress in the Natural Gas Act. To provide effective regulation of such companies, we must have information available from a uniform system of accounts. Otherwise, such regulation cannot be maintained on a national basis.

3915

CONCLUSION

We have failed, after careful deliberation, to find good cause to depart from our previous findings. In arriving at this conclusion we recognize fully the intention of Congress, as expressed in Section 1(b) of the Natural Gas Act, that local distribution of natural gas and the facilities used therefor shall be exempt from the jurisdiction of this Commission. We are, however, unable to view the operation of a 650-mile pipeline transportation system as a mere incident to local distribution. The finding that East Ohio is, by reason of its operation of this transportation system, a "natural-gas company" will, as we view it, in no manner interfere with the exercise by the State of Ohio of its authority to regulate the operations of the company in its

business of local distribution,—the field of local regulation which the Congress has clearly reserved to the States.

WHEREFORE, the Commission orders that:

(A) The stay of the order of June 25, 1946, granted by the order of August 23, 1946, be, and it hereby is, dissolved.

(B) Paragraph (D) of the order of June 25, 1946, be, and it hereby is, modified by striking the words "the date of this order," appearing in the first line, and substituting therefor, "November 7, 1947".

3916 (C) As thus modified, the order of June 25, 1946, be, and it hereby is, made effective.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance: November 7, 1947.

3919

Filed Dec 3 1947

Application of The East Ohio Gas Company for a Rehearing and Stay.

The East Ohio Gas Company, hereinafter referred to as "East Ohio," defendant herein, being aggrieved by the Commission's order dated November 6, 1947 and issued November 7, 1947 in the above proceedings and set forth in the Commission's opinion therein designated Opinion No. 158, making effective after a rehearing limited to oral argument the Commission's order of June 25, 1946 therein entitled "Order Requiring Compliance With Orders Heretofore Issued" which held East Ohio to be a "natural-gas company" within the meaning of the Natural Gas Act and

3920 directed it to comply with certain orders heretofore issued by the Commission, hereby applies for a rehearing and stay in respect of such order in accordance with Section 19(a) of the Natural Gas Act.

This application is based upon the following grounds:

I.

Said order issued November 7, 1947 modifies said order of June 25, 1946 only by advancing the date by which certain information must be furnished to the Commission from within 90 days from June 25, 1946 to within 90 days from November 7, 1947 and as so modified makes said order of June 25, 1946 effective. Within 30 days of the issuance of said order of June 25, 1946, to wit, on July 23, 1946, East Ohio filed its application for a rehearing and stay* thereof. Since said order issued November 7, 1947 makes effective said order of June 25, 1946 as aforesaid East Ohio, to avoid repetition, hereby as grounds for this application refers to and adopts as though here rewritten each and several of the representations, statements and grounds of its said application for a rehearing and stay of said order of June 25, 1946.

II.

(a) The Commission in said order issued November 7, 1947 erred in failing to make and give effect to the findings, requested by East Ohio, set forth in its said application for rehearing and stay in respect of said order of June 25, 1946 and shown by undisputed evidence in the record.

(b) The Commission in said order issued November 7, 1947 erred in failing to correct its Finding (15) in said order of June 25, 1946 that East Ohio's transmission lines Nos. 1, 2, 3, 4, 5 and 6 and its Youngstown branch lines "are not, and at all times mentioned herein, were not facilities used for the *** local distribution of natural gas" and further erred in its finding expressed in said Opinion No. 158 "that East Ohio's 650 miles of transmission pipelines, described herein, are not 'facilities used for' local distribution, ***."

* The following abbreviations were used in such application and are used herein: Ex.—exhibit; Stip.—Stipulation; R. I.—reference by incorporation to former proceedings; Ohio G. C.—Ohio General Code; Sec.—section; East Ohio—The East Ohio Gas Company; Hope—Hope Natural Gas Company; Commission or FPC—Federal Power Commission; T.—transcript of testimony.

3921 (c) The Commission in said order issued November 7, 1947 erred in not finding and holding that the transmission lines referred to in paragraph (b) above in their entirety are facilities used by and useful to East Ohio solely for the local distribution of natural gas in Ohio within the meaning of Section 1 (b) of the Natural Gas Act; that East Ohio is not a "natural-gas company" as defined in the Natural Gas Act; and that the Commission is without jurisdiction over East Ohio.

(d) The Commission in said order issued November 7, 1947 erred in not finding and holding that the transportation by East Ohio of its own gas through the transmission lines referred to in paragraph (b) above, solely for the purpose of meeting its only public utility obligation, namely, local distribution in Ohio, is "other transportation" within the meaning of Section 1 (b) of the Natural Gas Act; that East Ohio is not a "natural-gas company" as defined in the Natural Gas Act; and that the Commission is without jurisdiction over East Ohio. It further erred in its finding expressed in said Opinion No. 158 "that East Ohio's transportation of out-of-state natural gas in such lines is neither 'other transportation' nor 'local distribution' within the meaning of said Section 1 (b)."

III.

Even though East Ohio were properly held to be a "natural-gas company" within the meaning of the Natural Gas Act, which East Ohio denies, the Commission in said order issued November 7, 1947 nevertheless erred in requiring East Ohio to comply with the Commission's accounting requirements as set forth in its Orders Nos. 69, 69-A and 73 for the reason that said accounting requirements apply equally to all classes of property owned by a "natural-gas company" while the jurisdiction and authority of this Commission by the provisions of Section 1 (b) of the Natural Gas Act do not extend to the local distribution of natural gas, or to the facilities used for such distribution,

or to the production or gathering of natural gas, or to the facilities used for such production or gathering. To the extent that said former orders of this Commission, with which East Ohio is directed to comply by virtue of said order issued November 7, 1947 making effective said order of June 25, 1946, require East Ohio to conform to the accounting requirements of the Commission as set forth in said orders in respect of any facilities or business, other than those relating to the transportation of natural gas in interstate commerce, each of said orders is beyond the power of this Commission and invalid. Each of said
3922 orders should therefore be modified so as to apply only to such transportation property and operations.

IV.

The Commission in said order issued November 7, 1947 making effective said order of June 25, 1946 requires East Ohio to comply with a certain former Commission order in Docket No. G-115 dated February 14, 1939, as modified by an order dated April 14, 1939. These 1939 orders were both occasioned by an application instituted by the City of Cleveland in 1938 in which it was represented to the Commission that it would be helpful to the City of Cleveland in certain rate negotiations and litigation in which it was then engaged with East Ohio to determine on an original cost basis the cost to East Ohio of transporting natural gas from the Ohio River to the Cleveland city gate. Accordingly the Commission's orders required East Ohio to prepare and file a statement of the original cost, as of December 31, 1938, of all facilities then used in transporting gas from the Ohio River to the Cleveland city gate and the cost of all operating expenses attributable to that operation during 1936, 1937 and 1938.

By action of The Public Utilities Commission of Ohio in *East Ohio Gas Company v. City of Cleveland*, 27 P. U. R. (N. S.) 387 (1939) and affirmance thereof by the Supreme Court of Ohio in *The East Ohio Gas Co. v. Public Utilities*

Commission of Ohio, City of Cleveland v. Public Utilities Commission (Two Cases), 137 O. S. 225, 35 P. U. R. (N. S.) 158 (1940) the 1937-1939 rate litigation between East Ohio and the City of Cleveland pending at the time of the FPC orders referred to above was finally disposed of. By further action of The Public Utilities Commission of Ohio in The East Ohio Gas Company v. City of Cleveland, 56 P. U. R. (N. S.) 73 (1944) the rate litigation between East Ohio and the City of Cleveland pending subsequent to 1939 was finally disposed of for the period from 1939 through 1946, from which action neither East Ohio nor the City prosecuted any error or appeal. The rate fixed by the Ohio Commission in the latter proceedings has continued and is now the rate paid in Cleveland and there are now no rate controversies in any city served by East Ohio (Ex. 6, p. 22, T. 153).

Since, therefore, as shown by the record herein the controversy which occasioned these orders, directed only to East Ohio and not to all "natural-gas companies," has been completely disposed of; since those orders request expense data for 1936, 1937 and 1938 and cost data as of December 31, 1938, which are now wholly meaningless dates for any purpose, and since the expense to East Ohio of complying with these orders, if it be held to be a "natural-gas company," would exceed \$200,000, we again suggest that the Commission reconsider and now modify said order issued November 7, 1947 making effective said order of June 25, 1946 so as expressly to declare that East Ohio need not comply with the Commission's former order of February 14, 1939, as modified by its order of April 14, 1939.

The Commission's statement in said Opinion No. 158 that representatives of the City of Cleveland indicated a continuing desire for this 1936-38 data is unsupported by the record. Its statement that these very data will be useful and can readily be made current in further rate controversies is also wholly unsupported by the record. The

record shows original cost data to be irrelevant under the Ohio law relating to the matter of regulation of rates. If, however, a further local rate controversy should develop between East Ohio and any of the cities served by it and if the Commission despite Ohio rate law should hereafter be of the opinion on application by any such city that it could usefully require similar or other information from East Ohio, the Commission could then after a hearing make an appropriate and up-to-date order.

Based upon the record herein the present order is arbitrary and unreasonable in that it requires East Ohio to spend more than \$200,000 to comply with former 1939 orders to compile data wholly useless and relating to a question of local rates that is long since moot.

V.

(a) The investigation instituted in Docket No. G-115 and the information required by the orders in the above proceedings and the other orders involved are solely for the purpose of compiling information having no possible relevancy to any governmental object except the regulation of East Ohio's rates for the local distribution of gas in Ohio. The orders and any provisions of the Natural Gas Act construed to authorize their issuance therefore constitute an invasion of the powers reserved to the State of Ohio under the Tenth Amendment to the Constitution of the United States and an invalid extension of the powers delegated to the federal government by Article I, Section VIII thereof and are unconstitutional and void.

3924 (b) The investigation instituted and the information required by the above-mentioned orders would result in a compilation of data which can be of no useful purpose even in the regulation of East Ohio's rates for the local distribution of gas in Ohio in view of the Ohio law relating to the matter of regulation of rates. To furnish the same would require an expense to East Ohio of between \$1,500,000 and \$2,000,000. East Ohio's testimony as to this

expense was in no way challenged. The Commission's statement in said Opinion No. 158 that East Ohio's estimate is "unsupported" and "not convincing" is arbitrary. Under these circumstances insistence by the Commission upon the furnishing of this information, even if the Commission otherwise has statutory and constitutional jurisdiction, is an abuse of its statutory powers and is arbitrary and invalid as an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States and as a deprivation of East Ohio's property without due process of law and a taking of its property for public use without just compensation in violation of the Fifth Amendment thereto.

VI.

When the Commission made its original order herein dated February 14, 1939 in Docket No. G-115, which was supplemented by an order dated April 14, 1939 therein, East Ohio filed its applications for rehearing and after denials thereof promptly filed a petition to review such orders in the Circuit Court of Appeals for the Sixth Circuit. By such appeal East Ohio sought to have it judicially determined whether or not it was a "natural-gas company" within the meaning of the Natural Gas Act and whether the Commission had jurisdiction over it. It was at that time prevented from having this question determined by a motion of the Commission to dismiss the appeal on the ground that the order involving this question was not reviewable. The Circuit Court of Appeals so held in *East Ohio Gas Co. v. Federal Power Commission*, 115 F. (2d) 285 (1940). East Ohio, if this application is denied, will again promptly file a petition to review in accordance with Section 19(b) of the Natural Gas Act. The record herein does not disclose that anyone has been aggrieved by the delay which has so occurred in securing a judicial determination of East Ohio's status under the Natural Gas Act and does disclose, on the contrary, that East

3925 Ohio would immediately begin to have to incur enormous expense, between \$1,500,000 to \$2,000,000, to comply with the various Commission orders which it is ordered to comply with by said order issued November 7, 1947. Accordingly we respectfully request that the Commission stay its said order pending determination of this application and, conditioned upon East Ohio filing a petition for review under Section 19(b) of the Natural Gas Act, pending final determination by the courts of such judicial proceeding.

WHEREFORE, East Ohio, respectfully representing that grave errors have been committed in the orders heretofore made in these proceedings and in the order issued November 7, 1947 making the order of June 25, 1946 effective, requests a rehearing, reconsideration and vacation or modification of the Commission's order issued November 7, 1947 and the orders therein referred to and made effective thereby, and further requests that the Commission issue a stay of said order issued November 7, 1947 as set forth above.

Respectfully submitted,

THE EAST OHIO GAS COMPANY,
By JONES, DAY, COCKLEY & REAVIS, by

WILLIAM B. COCKLEY and
WALTER J. MILDE,

1759 Union Commerce Building,
Cleveland 14, Ohio,

W.M. A. DOUGHERTY and
C. W. COOPER,
30 Rockefeller Plaza,
New York, N. Y.

December 2, 1947.

3926

VERIFICATION

STATE OF OHIO,
CUYAHOGA COUNTY, ss.

W. G. ROGERS, being first duly sworn, deposes and says that he is Vice President of The East Ohio Gas Company, a corporation and the applicant herein, that he is duly authorized in the premises, that he has read the foregoing application for rehearing and stay and knows the contents thereof, and that the same are true as he verily believes.

W. G. ROGERS.

Sworn to before me and subscribed in my presence this December 2, 1947.

FREDERICK WOODBRIDGE,
Notary Public.

(Notarial Seal)

3928

Filed Dec. 8, 1947

Application of The State of Ohio and The Public Utilities Commission of Ohio for a Rehearing.

The State of Ohio* and The Public Utilities Commission of Ohio, intervenors herein, hereby apply, in accordance with Section (19)a of the Natural Gas Act, for a rehearing in respect to order issued by said Commission on November 7, 1947, in the above proceeding, wherein The East Ohio Gas Company, defendant herein, was declared to be a "natural gas company" within the meaning of the Natural Gas Act and as a result of such finding East Ohio was directed to comply and to conform to certain orders
3929 heretofore issued by said Commission. Ohio has been aggrieved by said orders, hereinabove referred

* The following abbreviations will be used herein:

"Ohio"—The State of Ohio; "P. U. C. O."—The Public Utilities Commission of Ohio; "FPC" or "Commission"—The Federal Power Commission; "Ohio G. C."—Ohio General Code; "East Ohio"—The East Ohio Gas Company.

to, in that the assumption of jurisdiction by this Commission represents an unwarranted and illegal invasion of the powers of Ohio to regulate its local natural gas distributing company, which powers were clearly preserved to Ohio under the provisions of the Natural Gas Act and by the intent of Congress.

In connection with and in support of this application, Ohio respectfully submits:

I

The Commission was in error in failing to make findings and give proper consideration to the following undisputed facts as set forth in the record, to-wit:

1. The prior and existing jurisdiction of Ohio over local natural gas distributing companies, covering authority to regulate all phases of such utility operations. The Ohio Public Utilities Act defines as a public utility, subject to its jurisdiction, a company "engaged in the business of supplying natural gas for lighting, power or heating purposes to consumers in this state," (Ohio, G. C., Sections 614-2 and 614-2a).

Other Ohio statutes covering utility regulations are as follows:

(1) Ohio G. C., Section 614-4, declares that P. U. C. O. has jurisdiction and power and duties to regulate every public utility, "the plant or property of which lies wholly within this state", to regulate companies operating 3930 said property and the records and accounts of the business thereof done within this state, and

(2) P. U. C. O. is given the power of general supervision, (Ohio G. C., Section 614-8),

(a) to examine records (Ohio G. C., Section 614-7),
 (b) to prescribe systems of accounts (Ohio G. C., Section 614-10),

(c) to compel the furnishing of adequate facilities (Ohio G. C., Section 614-13),

- (d) to prevent rebates and discriminations (Ohio G. C., Sections 614-14 and 614-15),
- (e) to fix and order changes in rates other than those fixed by municipal ordinance (Ohio G. C., Section 614-20 et seq.),
- (f) to hear appeal from and set aside ordinance rates, and fix substitute rates (Ohio G. C., Section 614-44 et seq.),
- (g) to prescribe forms of annual reports (Ohio G. C., Section 614-48),
- (h) to prescribe proper depreciation changes and require the setting up of a depreciation fund (Ohio G. C., Section 614-49),
- (i) to authorize the issue of securities (Ohio G. C., Section 614-53),
- (j) to regulate the purchase or sale of property (Ohio G. C., Section 614-60),
- (k) and many other regulatory powers.

3931 2. East Ohio has been under the jurisdiction of P. U. C. O. for approximately 36 years and said regulatory jurisdiction has extended to and included all phases of public utility regulation.

3. Ohio has continuously regulated said East Ohio during said period.

4. The matters presently the subject of the Commission's recent orders in this cause have within the past 12 years been the subject of three complete investigations, each of which included a detailed valuation of the entire production, transmission and distribution properties of East Ohio.

5. Rates for all services, domestic and industrial, are fixed either by ordinance passed by a municipal council and accepted by East Ohio, as provided by Ohio G. C., Sections 3982 and 3983, or by P. U. C. O. in an initial proceeding by the utility under Ohio G. C., Section 614-20 et seq., or by appeal from a municipal ordinance under Ohio G. C., Section 614-44 et seq.; and in all cases, regardless of how the rate is fixed or determined, a schedule setting forth said

rates and charges, both domestic and industrial, is filed with P. U. C. O.

6. All the property of East Ohio used in the production, storage, transmission or distribution is located within the territorial boundaries of Ohio, and such facilities are used solely for local distribution purposes.

7. P. U. C. O. has designated and regulates the system of all accounts of East Ohio, including such accounts, as 3932 production, storage, transmission or distribution; no public utility service is actively conducted by East Ohio except under the supervision and jurisdiction of Ohio, and it furnishes no public utility service nor operates public utility property except under supervision and jurisdiction of Ohio.

8. The information and data requested by FPC in its order to East Ohio would result in the duplication of information already many times required to be furnished and presently on file with P. U. C. O.

9. If East Ohio is forced to comply with FPC's orders of February 14, 1939, and April 14, 1939, it will necessitate the expenditure of approximately \$200,000; the expenditure of such a sum for such demanded information would serve no useful purpose; there is no present need for such information; there is no present rate litigation in Ohio, wherein such information could be put to use.

10. The cost, estimated to be approximately \$1,500,000, to East Ohio (and to Ohio gas consumers) to be expended in the company's compliance with the Commission's orders Nos. 69, 69-A and 73, requiring reclassification and statement of original cost of all of East Ohio's properties, including general, distribution, production and transmission, is not justified in this record nor is there evidence that said expenditure will result in any useful purpose to the gas consumers in Ohio.

II

1. In addition to errors of FPC herein in failing to 3933 make findings and give consideration to the above (1

to 10) facts, said Commission erred in not finding and holding that the transmission lines, Nos. 1, 2, 3, 4, 5, 6, and 7, and Youngstown branch of East Ohio, are facilities used and useful solely for local distribution of natural gas within the meaning and intent of Section 1(b) of the Natural Gas Act and that the Commission is without jurisdiction over East Ohio.

2. The Commission erred in finding that said transmission lines, above referred to, are not "facilities used for" local distribution.

3. The Commission erred in finding that East Ohio is "engaged in the transportation of natural gas in interstate commerce", and that it (East Ohio) is, therefore, a "natural gas company" within the meaning of the Natural Gas Act (Sections 1(b) and 2(6)).

4. The Commission erred in finding that East Ohio is engaged in the "business" of transportation under Section 1(a) of the Natural Gas Act when it transports neither for sale for resale nor for others for hire.

5. The Commission erred in finding that the legislative history as to the intent of the Natural Gas Act, as well as Sections 5(b), 6, 7, 8, 9 and 10, plainly points to the fact that protection of public interest was deemed by Congress to make necessary federal regulation of East Ohio.

6. The Commission erred in not finding and holding that movement of natural gas owned by East Ohio in the
3934 above-mentioned lines, solely to meet local regulated distribution obligations in Ohio, is neither "other transportation" nor "local distribution" within the meaning and intent of Section 1(b) of the Natural Gas Act and that the Commission is without jurisdiction over East Ohio.

7. The Commission erred in ordering East Ohio to comply with all of the Commission's accounting system as set out in its orders Nos. 69, 69-A and 73, for the reasons that said accounting system applies to all classes of property owned and operated by East Ohio and since said Commission's use of jurisdiction does not (under Section 1(b)

of the Natural Gas Act) extend to local distribution, or to facilities for such local distribution, or to production or gathering, or to the facilities used for such production or gathering, East Ohio is being compelled to set up two separate expensive accounting systems to regulate identical property, the first system of accounts as required and ordered by P. U. C. O. under Ohio law, and the second system of accounts as ordered by the Commission, contrary to the Natural Gas Act and the intent of Congress.

8. The Commission erred in its attempt to assume authority over East Ohio as a natural gas company and over its accounting system on the jurisdictional test that out-of-state gas is carried in its transmission lines or that the pressure of said out-of-state gas is controlled by contract. The Commission erred in not using the test of whether said transmission properties are local distribution facilities.

3935 9. The Commission erred in not giving consideration to the historical intent of Congress in enacting the Natural Gas Act, which declares that FPC shall not have jurisdiction over facilities used in local distribution of natural gas, and that the Commission's authority "extends only to those matters which were not subject to regulation by the states".

10. The Commission erred in exceeding its jurisdiction in attempting to impose dual regulation upon a local natural gas company presently under Ohio's jurisdiction.

11. The Commission erred in exceeding its jurisdiction in attempting to extract information from a local natural gas distributing company where the avowed purpose of such information is to aid in the setting of a local burner rate contrary to the purpose and intent of the Natural Gas Act.

12. The Commission erred in its assumption that the facts and its findings in this cause bring East Ohio within the purview of the Natural Gas Act and, therefore, subject to its jurisdiction for accounting purposes or otherwise.

13. The Commission erred in failing to find that Ohio has been excluded by the Natural Gas Act of exclusive control and jurisdiction over the property and accounting systems, herein the subject of this cause; in failing to find and describe accurately the bounds of jurisdiction of the FPC; and in failing to find that the jurisdiction of Ohio had been properly considered and that the intent of 3936 the Natural Gas Act was to grant deliberate overlapping of authority.

III

1. The orders of the Commission in this cause and the provisions of the Natural Gas Act construed to be the basis for such orders, constitute an unwarranted and illegal invasion of the powers reserved to Ohio under the Tenth Amendment to the Constitution of the United States and an unwarranted and invalid extension of the powers delegated to the federal government by Article I, Section 8, thereof, and are unconstitutional and void.

2. The orders of FPC in this cause required the expenditure of funds upward to \$2,000,000 for which the record herein shows no useful purpose nor evidence that would substantiate any assumption of a useful purpose other than a veiled attempt to participate in the setting of a local distribution rate for natural gas not subject to federal regulation. The assumption of jurisdiction by the Commission for such purposes is unwarranted, arbitrary, invalid and in violation of the Fourth Amendment to the Constitution of the United States as an unreasonable search and seizure and as a means of depriving a local natural gas distribution company of property under the control of Ohio without due process of law, and a taking of its property for public use without just compensation in violation of the Fifth Amendment of the Constitution of the United States.

Wherefore, the State of Ohio and The Public Utilities Commission of Ohio respectfully submit that serious errors have been committed in the order

made herein, request a rehearing for the purpose of reconsidering and vacating the Commission's order of November 7, 1947, and the orders therein included and referred to.

Respectfully submitted,

HUGH S. JENKINS,
Attorney General of Ohio,
 State House, Columbus 15, Ohio.

HARRY G. FITZGERALD, JR.,
Assistant Attorney General,
 State Office Bldg., Columbus 15, Ohio,
Attorneys for the State of Ohio and
The Public Utilities Commission of Ohio.

December 2, 1947.

• • • • • • • •

3939 December 30, 1947

Order Modifying Orders of June 25, 1946 and November 7, 1947, and Denying Applications of The East Ohio Gas Company for Rehearing and Stay and of Intervenors for Rehearing.

It appearing to the Commission that:

(a) On December 3, 1947, respondent and defendant The East Ohio Gas Company ("East Ohio"), filed an application for a rehearing of the Commission's order issued on November 7, 1947, in these proceedings and for a stay of said order of November 7, 1947.

(b) On December 8, 1947, intervenors The State of Ohio and The Public Utilities Commission of Ohio filed an application for a rehearing of said order of November 7, 1947;

3940 (c) Paragraph (A) of the order in these proceedings of June 25, 1946, made effective by the order of November 7, 1947, requires East Ohio to furnish certain data relating to the cost of transporting natural gas from the Ohio River to the City of Cleveland as required by an

order herein of February 14, 1939, as supplemented by an order herein of April 14, 1939;

(d) The foregoing requirements in large part are duplications of requirements of Orders Nos. 69, 73 and 69-A, issued on November 3, 1939, April 9, 1940 and March 3, 1942, respectively, concerning the preparation and filing of accounting and original cost data; and insofar as no duplication exists, the furnishing of the information referred to in paragraph (c) hereof would presently serve little useful purpose;

(e) Good cause exists for modifying the orders in these proceedings of June 25, 1946, and November 7, 1947, as hereinafter specified, and in all other respects denying the applications of East Ohio and the aforementioned intervenors;

The Commission orders that:

(A) The aforementioned order dated June 25, 1946, be and the same is hereby modified by striking out the whole of paragraph (A) thereof; and the aforementioned order dated November 7, 1947, be and the same is hereby vacated insofar as it makes effective said paragraph (A) of the order of June 25, 1946;

(B) The aforementioned applications of East Ohio and intervenors The State of Ohio and The Public Utilities Commission of Ohio be and the same are in all other respects hereby denied.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance: December 30, 1947.

**197 United States Court of Appeals for the District of Columbia
Circuit**

Filed Feb. 14, 1949, Joseph W. Stewart, Clerk

No. 9741

THE EAST OHIO GAS COMPANY, PETITIONER,

v.

FEDERAL POWER COMMISSION, RESPONDENT

**STATE OF OHIO, THE PUBLIC UTILITIES COMMISSION OF OHIO,
INTERVENORS**

On Petition for Review of Orders of the Federal Power Commission

Argued December 9, 1948

Decided February 14, 1949

Mr. William B. Cockley, with whom Messrs. Walter J. Milde, Wm. A. Dougherty, C. W. Cooper and Sturgis Warner were on the brief, for petitioner. Mr. Warren S. Ege also entered appearance for petitioner.

Mr. William S. Tarver, Assistant General Counsel, with whom Messrs. Bradford Ross, General Counsel, Louis W. McKernan, Bernard A. Foster, Jr., and Howell Purdue, Attorneys, Federal Power Commission were on the brief, for respondent.

Messrs. Hugh S. Jenkins, Attorney General, and Harry G. Fitzgerald, Jr., Assistant Attorney General, were on the brief for Intervenors State of Ohio and The Public Utilities Commission of Ohio, urging reversal.

Before EDGERTON, CLARK and PRETTYMAN, JJ.

CLARK, J.: The case is before this court on the petition of the East Ohio Gas Company (hereinafter alternatively referred to as East Ohio or as petitioner) for review of certain orders of the Federal Power Commission (referred to hereinafter as the Commission or the respondent). The orders sought to be reviewed found East Ohio to be a "natural-gas company" within the meaning of the Natural Gas Act of 1938, as amended,¹ subject to the jurisdiction of the Commission and ordered East Ohio: (1) to comply with all previous general accounting orders of the Commission applicable to "natural-gas companies"; (2) to comply with all previous Com-

¹ 52 Stat. 821 (1938), 15 U. S. C. § 717 *et seq.* (1946).

mission orders requiring the filing of annual reports; and (3) to file with the Commission within 90 days the data, statements and reports required by previous orders insofar as it reasonably could and to inform the Commission when the remainder could be filed.

During all the proceedings before the Commission the effectiveness of the orders here under review was stayed by the Commission in order to preserve the *status quo*. Similarly, upon petition of East Ohio, and the respondent having filed consent thereto, this court granted a stay pending its decision on review.

Although the petitioner and the respondent differ radically as to the interpretation of the facts of the case and their net effect, as might be expected, there is no controversy as to the material facts themselves. East Ohio is an Ohio corporation with its principal place of business in Cleveland, Ohio. The very heart of the instant controversy is the definition of the nature of East Ohio's business, petitioner and the intervenors claiming that East Ohio is solely engaged in the business of direct, local distribution of natural gas in the State of Ohio, and respondent claiming that petitioner is in the business of transporting gas in interstate commerce. Postponing, for the moment, further discussion of that critical question, it is certain that all property and facilities owned and operated by East Ohio lie within the physical boundaries of the State of Ohio, that East Ohio distributes natural gas in Ohio by means of an extensive pipeline system,² and that none of East Ohio's pipelines crosses state lines. Further, it is uncontested that petitioner makes no sales of any kind to any other company for resale purposes and that none of the gas sold by petitioner is consumed outside of Ohio, that is, none of the gas in the pipelines of East Ohio flows out of the State of Ohio.

Petitioner's sources of natural gas are threefold. As of 1945,³ petitioner got 62% of its gas from the Hope Natural Gas Company

² According to the briefs of petitioner and of intervenors, East Ohio's pipeline property, using the accounting classification required by the Public Utilities Commission of Ohio, was, in 1945, as follows:

	Miles
Distribution lines	5,490
Storage lines	672
Field lines	1,011
Transmission lines	903
 Total	 8,076

³ The Commission proceedings from which the orders under review arose commenced in early 1946. The statistics presented before the Commission were necessarily those pertaining to petitioner's property and activities during the preceding year and all facts and figures contained in this opinion, unless otherwise specified, refer also to the year 1945.

(hereinafter called Hope),⁴ 23% from the Panhandle Eastern Pipe Line Company (hereinafter called Panhandle), and 15% from native Ohio fields.⁵ The gas procured by East Ohio from Hope and from Panhandle is concededly gas from sources outside the State of Ohio (principally from West Virginia, Texas, Oklahoma and Kansas). The gas procured from Hope first enters petitioner's pipeline system principally at two points in *Ohio* known as Pipe Creek Station and Clarington Station, both on the Ohio side of the Ohio River. Panhandle gas first connects with and joins the East Ohio system at Maumee, Ohio, a point about 40 to 50 miles east of the western boundary of Ohio. The first point locally-produced gas enters the pipelines of petitioner is a point in Harrison County, Ohio, about 40 miles from the Ohio-West Virginia state line.

199 It is established by the record and found by the Commission that East Ohio serves more than 551,000 consumers in 69 north-eastern Ohio communities having an estimated total population of over 2,000,000 people. The total sales figure of petitioner in 1945 was 77,428 million cubic feet (Mcf).⁶ Much is made by the Commission of the fact that petitioner receives its gas from both Hope and Panhandle at high pressures which, in most cases, are sufficient to propel the gas through petitioner's large trunk lines to their ultimate destination without repumping. East Ohio does not deny that this is so. On the other hand, the Commission, both in its several orders and in its brief in this case, passes rather lightly over the fact which we consider extremely important, namely, that East Ohio has long been subject to complete regulation by the Public Utilities Commission of Ohio, intervenor herein.

The Ohio Commission was created in 1911. Ever since that date it has repeatedly and continuously exercised its regulatory powers over all the business activities and property of petitioner. This regulation has included the setting of numerous rates, the supervision of acquisitions and sale of property and security issues, the control of accounting practices, inauguration and termination of service, examining service complaints, and requiring the submission of detailed reports to the Ohio Commission. Abundant state statutory authority exists for this regulation by the Ohio Commission⁶ and the state

⁴ These three percentages, set forth in even numbers for convenience, are accurate within .5%.

⁵ The total sales figure is broken down in the following manner: Sold to domestic consumers—46,674,457 Mcf; Sold to industrial consumers—30,126,754 Mcf; and Field sales—627,196 Mcf. Field sales are made from the Ohio producing fields and the gas is entirely consumed in Ohio.

⁶ Intervenors, the State of Ohio and the Public Utilities Commission of Ohio, have provided us with excerpts from the Ohio General Code relating to public utility regulation. These excerpts are in pamphlet form, printed in 1946. We have examined the cited portions of the Ohio General Code

regulation authorized is mandatory, not permissive. As of the time of the hearings before the Commission in this case there had been a total of 258 formal regulatory proceedings before the Ohio Commission involving East Ohio. There can be little doubt that petitioner is now and has been very thoroughly and completely regulated by the Ohio Commission.

Since numerous prior proceedings shed some light on the issue in the present case, it is deemed necessary to discuss briefly those proceedings at this point. The Natural Gas Act became law on June 21, 1938. In October of the same year, the City of Cleveland, then engaged in a rate controversy with East Ohio before the Ohio Commission, filed a petition with respondent Commission praying for an investigation of East Ohio's cost of transportation of gas from the Ohio River to the Cleveland city gate. The Cleveland petition also asked that East Ohio be ordered to file an inventory of its property devoted to the transportation of natural gas and a statement of the original cost thereof. On February 14, 1939, the Commission issued an order in which the Commission found East Ohio to be a "natural-gas company" within the meaning of the Act and ordered East Ohio to file an inventory and statement of original cost of its property. This order was entered on the Commission's own motion and without hearing. East Ohio's application for a hearing, rehearing

~~200~~ and stay of that order on the ground that its transportation was incident to local distribution having been unsuccessful, it filed a petition for review in the United States Circuit Court of Appeals for the Sixth Circuit (now the United States Court of Appeals for the Sixth Circuit). That court dismissed the petition for want of jurisdiction, it being the opinion of the court that the order was preliminary and not reviewable.⁷ On three occasions since that dismissal, East Ohio applied for, and was granted by the Commission, certain certificates concerning its operation. In each of these three applications East Ohio asked in the alternative that the Commission declare that East Ohio is not a "natural-gas company" within the meaning of the Act. The Commission each time denied the alternative request. No judicial review was sought of any of these three certificate proceedings, it being the position of East Ohio that it was not then a party aggrieved by the orders granting the certificates to it so as to justify the seeking of judicial review.⁸ Petitioner further asserts that prudence required that it

contained therein (particularly §§ 614-2a, 614-4, 614-8, 614-10, 614-48, and 614-60) and find them definitely applicable to East Ohio.

⁷ *East Ohio Gas Co. v. Federal Power Commission*, 115 F. 2d 385 (1940).

⁸ Section 19 (b) of the Natural Gas Act, 52 Stat. 831 (1938), 15 U. S. C. § 717r (b) (1946), provides for judicial review of Commission orders by "any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding."

apply for these certificates but that it has otherwise never voluntarily submitted to the jurisdiction of the Commission and that it has never otherwise complied with any of the Commission's general orders, including those now under review.

The order or orders presently under review require petitioner's complete submission to the jurisdiction of the respondent and further require, as we have seen above, the preparation of annual financial and statistical reports covering all of petitioner's properties and operations, year by year, since 1939. By these orders East Ohio is also required to change its entire accounting system for all of its properties so as to conform to the accounting system prescribed by the Commission, namely, one subscribing to the "original cost" theory of accounting. Petitioner claims, and it is uncontroverted, that the cost to petitioner of compliance with the orders being reviewed would now be between \$1,500,000 and \$2,000,000.⁹

The State of Ohio and the Public Utilities Commission of Ohio, both parties to the proceedings below, have been allowed to intervene here and both support the contentions of East Ohio.

The Natural Gas Act, which controls the disposition of the present case, commences with the declaration that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest" and hence subject to federal regulation.¹⁰ Immediately thereafter, Section 1 (b) of the Act provides as follows:

"The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."¹¹ (Emphasis supplied.)

Section 2 of the Act, containing definition of terms in the Act, reads in pertinent part as follows:

⁹ In this regard, the Commission, in its opinion and order of November 6, 1947, states that: ". . . the unsupported estimate of cost of reclassification and original cost studies is not convincing, for our experience with other companies with greater property investment indicates that this estimate is considerably exaggerated."

¹⁰ 52 Stat. 821 (1938), 15 U. S. C. § 717(a) (1946).

¹¹ 52 Stat. 821 (1938), 15 U. S. C. § 717(b) (1946).

"When used in this Act, unless the context otherwise requires—

• • • • *

"(6) 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"(7). 'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States." ¹²

It was the conclusion of the Commission below, and it is its present contention on appeal, that because East Ohio owns and operates about 650 miles of large-diameter, high-pressure pipeline which connect up with those of Panhandle and Hope, which 650 miles represents about 8% of the total miles of pipeline owned and operated by East Ohio, it (East Ohio) is a natural-gas company 'engaged in the transportation of natural gas in interstate commerce' under Section 2(6) of the Act, *supra*, and thus subject to Commission jurisdiction. We do not agree with the Commission in this respect. Further, we do not believe that the above-quoted portions of the Act either expressly or impliedly include, or were intended to include, the above-mentioned activities of petitioner. The Act says that a natural-gas company is one which is engaged in the transportation of natural gas in interstate commerce and it defines interstate commerce, for purposes of administration of the Act, as "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof." We think it obvious that East Ohio does not engage in the transportation of natural gas in interstate commerce by the very definition of such commerce provided in the Act. Moreover, the Act, in Section 1(b), *supra*, expressly states that it shall *not* apply "to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." Not only does East Ohio produce or gather natural gas, but it strongly urges, and we believe the previously discussed facts clearly demonstrate, that it is engaged *solely* in the local distribution of natural gas to local consumers. All of its property, including the 650 miles of high-pressure lines, is devoted to that sole purpose. Thus, once again, the very words of the Act exclude petitioner from its administration.

¹² 52 Stat. 821-2 (1938), 15 U. S. C. §§ 717a (6) and (7) (1946).

In holding as we do that petitioner herein is not engaged in the transportation of natural gas in interstate commerce within 202 the meaning of the Act, we are not unaware of the modern trend of judicial opinion toward great expansion of federal powers under the ever-broadening concept of what constitutes interstate commerce.¹³ However, where, as here, Congress has spoken explicitly and has, we must assume, purposefully provided an express definition of interstate commerce in the very Act which governs in this case, we take it to be not only the logical but the proper course for us to be governed by that express definition, in the absence of constitutional prohibitions, and not to search elsewhere for definition among *judicial interpretations* of the concept of interstate commerce.¹⁴

Sufficient has been said to support our conclusion that respondent Commission lacks jurisdiction over East Ohio and hence that the orders under review herein must be reversed insofar as they require compliance by East Ohio. Since, however, both petitioner and respondent rely heavily on the so-called legislative history of the Act as showing the intent of Congress at the time of the enactment of the Natural Gas Act, we deem it desirable to discuss briefly our view of the intent of Congress, bearing in mind constantly that any attempt to probe the collective mind of Congress as of a given time is at best speculation aided only by such written reports and accounts of committee proceedings as are available in the form of Senate and House documents, reports, and resolutions and in the form of excerpts from the *Congressional Record* and in other matters of public record. Fortunately for this court, the legislative history of the Natural Gas Act is not a new subject, it having received rather thorough treatment in several opinions of the Supreme Court. In one of those opinions, *Public Utilities Commission of Ohio et al v. United Fuel Gas Co. et al.*, 317 U. S. 456, 63 Sup. Ct. 369, 87 L. Ed. 396 (1943), Mr. Justice Frankfurter, speaking for the majority, said:

"It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be *complementary in its operation to that of the states, without any confusion of functions*. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, *to the extent defined in the Act*, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious, dual

¹³ See Humes, *Trend of Decisions Respecting the Power of Congress to Regulate Interstate Commerce* (1940) 26 A. B. A. Journal 846, and cases cited therein.

¹⁴ Cf., *Border Pipe Line Co. v. F. P. C.*, 171 F. 2d 149 (App. D. C. 1948).

system of regulation of the natural gas industry—federal and state regulatory bodies operating side by side, each active in its own sphere. See H. Rep. No 2651, 74th Cong., 2d Sess., pp. 1-3; H. Rep. No. 709, 75th Cong., 1st Sess., pp. 1-4; Sen. Rep. No. 1162, 75th Cong., 1st sess.”¹⁵ (Emphasis supplied.)

In another of those opinions, *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana et al.*, 332 U. S. 507, 68 Sup. Ct. 190 (1947), Mr. Justice Rutledge, speaking for a unanimous Court, said:

“The Act, though extending federal regulation, had no purpose or effect to cut down state power. On the contrary, 203 perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce it in the gap created by the prior decisions. [Footnote reference omitted] The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way. This appears not merely from the situation which led to its adoption and the legislative history, including the committee reports in Congress cited above, but most plainly from the history of § 1 (b) in respect to the changes which took place in reaching its final form.”¹⁶ (Emphasis supplied.)

It is clear from the foregoing that the plain intent of Congress in enacting the Natural Gas Act, as interpreted by the Supreme Court, was to fill in the gap in regulation of the natural gas industry by supplementing existent state regulation with federal regulation of activities beyond the scope of regulatory authority of the state commissions. Viewed in this light, we deem it abundantly manifest that the Act was never intended to confer jurisdiction over such a company as East Ohio since that company was already completely and validly regulated by the Ohio Commission long prior to the passage of the Act. Stated somewhat differently, the Act does not apply to petitioner, and in fact expressly excludes it, there being no regulatory gap to be filled in. All of the gas coming to East Ohio from out of state, gas furnished primarily by Hope and Panhandle, is already completely subject to federal regulation and comes to East Ohio at a rate set by the federal commission. There is thus obviously no gap in regulation in this case and the attempted assumption of jurisdiction by the federal commission in this instance, far from supplementing and reinforcing, constitutes unnecessary,

¹⁵ 317 U. S. at page 467.

¹⁶ 332 U. S. at pages 517-8.

undesirable and unintended usurpation of state regulatory authority which cannot be justified by either the terms of the Act or its legislative history.

To show that the Federal Power Commission itself had complete understanding of the purpose of the Act just prior to its passage, we need only to quote from a statement made by Dozier A. DeVane, Solicitor of the Federal Power Commission, before a subcommittee of the House Committee on Interstate and Foreign Commerce in 1936, as follows:

"The whole purpose of this bill is to bring under Federal regulation the pipe lines and to leave to the State Commissions control over distributing companies and over their rates, *whether that gas moves in interstate commerce or not.*"¹⁷ (Emphasis supplied.)

Finally, we are not required to speculate as to the cost to East Ohio of compliance with the Commission orders under review, for if, as we hold herein, the Commission lacks jurisdiction to enter those orders, they are, of course, a nullity as to East Ohio. We therefore reach no decision as to the reasonableness or constitutional validity of the orders. Nor do we deem it of any significance that

204 East Ohio applied for and received certificates in the past from respondent Commission, since no actions of either party, either voluntary or involuntary, can confer jurisdiction where it otherwise does not exist and where, as we have seen, the Act expressly prevents the attachment of jurisdiction and lays down the jurisdictional limits beyond which the Commission shall not trespass.

Accordingly, the orders involved herein, insofar as they purport to pertain to East Ohio, are

Reversed.

EDGERTON, J., dissenting: The present petitioner was the appellant in *East Ohio Gas Co. v. Tax Commission of Ohio*, 283 U. S. 465 (1931). The Supreme Court said unanimously (p. 470): "The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that State. The mere fact that the title or the custody of the gas passes while it is

¹⁷ Hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, Seventy-Fourth Congress, Second Session, on H. R. 11662 (a predecessor bill to that which ultimately became law as the Natural Gas Act), at page 24.

en route from State to State is not determinative of the question where interstate commerce ends." *Cf. Southern Natural Gas Corp. v. Alabama*, 301 U. S. 148, 154 (1937).

Congress passed the Natural Gas Act in 1938. The Supreme Court has said unanimously: "There is nothing in the terms of the Act or in its legislative history to indicate that Congress intended that a more restricted meaning be attributed to the phrase 'in interstate commerce' than that which theretofore had been given to it in the opinions of this Court." *Interstate Natural Gas Co., Inc. v. Federal Power Commission*, 331 U. S. 682, 688 (1947).

205 United States Court of Appeals for the District of Columbia Circuit

Filed Feb. 14, 1949, Joseph W. Stewart, Clerk.

January Term, 1949.

No. 9741

THE EAST OHIO GAS COMPANY, PETITIONER,

vs.

FEDERAL POWER COMMISSION, RESPONDENT

**STATE OF OHIO, THE PUBLIC UTILITIES COMMISSION OF OHIO,
INTERVENORS**

On Petition for Review of Orders of the Federal Power Commission

Before: EDGERTON, CLARK and PRETTYMAN, JJ.

Judgment and Decree

This cause came on to be heard on the transcript of the record from the Federal Power Commission, and was argued by counsel.

On consideration, whereof, It is now here ordered, adjudged and decreed by this Court that the orders of the said Federal Power Commission on review in this cause be, and the same are hereby, reversed insofar as they purport to pertain to petitioner, The East Ohio Gas Company, and that this case be, and it is hereby, remanded to the said Federal Power Commission for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge Clark.

Dated February 14, 1949.

Dissenting opinion by Circuit Judge Edgerton.

206 In the United States Court of Appeals for the District of Columbia Circuit

Filed Mar. 22, 1949. Joseph W. Stewart, Clerk

No. 9741

THE EAST OHIO GAS COMPANY, PETITIONER,

v.

FEDERAL POWER COMMISSION, RESPONDENT

STATE OF OHIO, THE PUBLIC UTILITIES COMMISSION OF OHIO,
INTERVENORS

Designation of Record

The Clerk will please prepare a certified transcript of record for use on petition for writ of certiorari to the Supreme Court of the United States in the above-entitled cause, and include therein the following:

1. Joint Appendix to Petitioner's Brief.
2. Opinion.
3. Judgment.
4. This Designation.
5. Clerk's Certificate.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Respondent.

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Certificate of Service

I hereby certify that I have this day served a copy of the Designation of Record and a copy of the Motion on each of the following persons by mailing copies to them at their business addresses:

Sturgis Warner, Esquire, Warren S. Ege, Esquire, 1435 E Street, N. W., Washington.

William A. Dougherty, Esquire, 30 Rockefeller Plaza, New York, N. Y.

William B. Cockley, Esquire, 1759 Union Commerce Building, Cleveland 14, Ohio, Counsel for The East Ohio Gas Co.

The Attorney General of Ohio, State House, Columbus 15, Ohio, Counsel for: State of Ohio; The Public Utilities Commission of Ohio, Intervenors:

Dated: March 18, 1949.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.

208 United States Court of Appeals for the District of Columbia
Circuit

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, formerly United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered 1 to 207, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and the proceedings of the said Court of Appeals as designated by counsel in the case of: The East Ohio Gas Company, Petitioner, v. Federal Power Commission, Respondent; State of Ohio, Public Utilities Commission of Ohio, Intervenors. No. 9741, January Term, 1949, as the same remain upon the files and records of said Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twenty-ninth day of March, A. D. 1949.

JOSEPH W. STEWART,
*Clerk of the United States Court of Appeals
for the District of Columbia Circuit. (Seal.)*

209 In the Supreme Court of the United States, October Term,
1948

No. —

FEDERAL POWER COMMISSION, PETITIONER,

v.

THE EAST OHIO GAS COMPANY, RESPONDENT;

STATE OF OHIO, THE PUBLIC UTILITIES COMMISSION OF OHIO,
INTERVENORS

Stipulation

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties hereto that:

1. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

- (a) Joint Appendix.
- (b) The proceedings had before the United States Court of Appeals for the District of Columbia Circuit.

2. Petitioner will cause the Clerk of the United States Court of Appeals for the District of Columbia Circuit to file with the Clerk

of the United States Supreme Court the entire transcript of record in the United States Court of Appeals for the District of Columbia Circuit, and any of the parties may refer in their briefs and arguments to said transcript of record, including any part which has not been printed.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.

Dated: March, 1949.

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 Public Utilities Commission of Ohio,
 Intervenors.

KENNETH B. JOHNSTON,
 Asst. Attorney General.

HARRY G. FITZGERALD, JR.,
 Special Counsel.

MARCH 31, 1949.



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Supreme Court of the United States.

Order allowing certiorari

Filed-June 20, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.